INTERNATIONAL MORALITY.

INTERNATIONAL MORALITY;

OR, THE

TOUCHSTONE

OF THE

LAW OF NATIONS.

BY

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ETC. ETC.

"Truth to Christ cannot be treason to Cæsar."—RUTHERFORD.

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BIBLIOTHECA·BODLEIANA

TO THE

HON^{BLE} F. HENRY F. BERKELEY,

REPRESENTATIVE IN PARLIAMENT

FOR THE

CITY OF BRISTOL,

THIS,

IN ADMIRATION OF HIS ABILITY,

IS

RESPECTFULLY DEDICATED.

Inner Temple, July 1, 1851.

DEAR SIR,

I HAVE for years thought, that until *Grootism* [the present system of the Law of Nations of which Hugo Grotius or Hugo de Groot is the reputed father] be thoroughly rooted out, and the moral world restored to its proper centre of gravity, namely, the *Divine Will*, wars and the rumor of wars will continue: and "gôitre keep gôitre in countenance" until the day of judgment; or rather, as Burke said to Pitt, until the day of *no* judgment.

I also think that a subject affecting all men should not be written in *Latin* or in *Greek*, but in a living language: and should be in a form at once pleasing and instructive; in other words, that to purge the system of the *prolific error*, the pill must be made more to men's liking than it now is.

The *Divine Will*, as the source of all moral obligation, I found well nigh universally acknowledged. But I have asserted, that the *Light of Nature* is not our guide to the discovery of that Will. I have asserted that it was

expressly revealed to man eighteen-hundred and fifty-one years ago.

I have also shown by examples how easily the *Christian Canons* may be applied by nations to their intercourse with one another.

If my style be not the best, I hope it will be, at least, adjudged free of the forbidding tone, which, until of late, deterred many an intelligent and inquiring mind from one of the most important and interesting of human studies.

I am,

DEAR SIR,

Yours, &c.,

GEORGE ATKINSON.

INTERNATIONAL LAW[1].

BOOK I.

CHAPTER I.

THAT law, which nations ought to observe in their intercourse with one another, is my theme. And what grander subject of discourse than that, which has the Divine Will for its Author, the everlasting happiness of mankind for its end, and universal love for its matter? And I might also say, what happier time could be chosen for the task than the present? what more suitable

[1] Jus *inter* gentes; Jus Feciale; droit *entre* les gens; or International Law, is the proper title. See Sir James MacIntosh's *Discourse on the Study of the Law of Nature and Nations*, p. 8, 12mo. London, 1828.

place than the chief seat of British Empire, where, at this moment, men of all nations and of all creeds, of all trades and of all professions, are gathered together to take part in the world's jubilee of Science?

The history of the world records for our instruction many seasons, when the mind of man has, so to speak, cast its slough, and presented itself to the world again in a new form; at one time, in great strength and purity, at another, alas! in awful weakness and deformity: revolutions in which nations and individuals (though far apart) have alike undergone the change. The introduction of Christianity, the Protestant Reformation, the Revolution of 1792 in France, present many examples of both. I have been led into this train of reflection more by my hopes than fears—hopes that (out of the late mighty convulsion in the world's political system, out of the late violent effort on the continent of Europe to shake off that something, which, seemingly beyond endurance, fretted and teased the body politic, and which *for fear*

of change perplexed Monarchs) some regenerated spirit may have arisen to guide us, as the pillar of fire did the Israelites of old, to the promised land—"to those fundamental verities, which, like the light of Heaven, are not only beautiful and entertaining in themselves, but give light and evidence to other things, that without them could not be seen or known."[1] He who can so assert Eternal Providence, and justify the ways of God to man, will have at least this praise (and what nobler epitaph need any one desire?)—that he left the world better than he found it. "To discover, as Sir James MacIntosh has beautifully expressed himself, "one new link of that eternal chain, by which the Author of the Universe has bound together the happiness and duty of his creatures, and indissolubly fastened their interests to each other, would fill my heart with more pleasure than all the fame with which the most ingenious paradox ever crowned the most eloquent sophist."

[1] Bacon's *Essays*.

CHAPTER II.

ORIGIN AND NATURE OF THE PRESENT SYSTEM.

THE present system, which commonly bears the name of *The Law of Nature and Nations*, is said to have been conceived by Lord Bacon and Peiresc, and suggested by them to Grotius[1]. Why the merit of this idea is assigned to them, in derogation of the claims of Petrarca, Machiavelli, Bracciolini, Matteo Bosso, and other Italian moralists, who had, before Bacon wrote, entered largely into the field of *general ethics*, is nowhere explained. Hobbes's *De Cive* had appeared, Victoria, Lupus, Suarez, Gentilis[2], Ayala, Henry de Gorcum, Aria, and others had

[1] Barbeyrac, Puff., s. 29; and see MacIntosh, Ward, Kent.

[2] Albericus Gentilis was Regius Professor of Civil Law in Oxford (1585).

also, before then, acquired European fame[1]. Perhaps, the true meaning of it is, that Bacon's works first suggested to Grotius the propriety of separating more distinctly, from the general code of ethics, so much of it as regulated the intercourse of nations, and the necessity of erecting it into an independent science. However, whether we owe it to the author's own misfortunes (as some say), to the wisdom of Bacon (according to others), or to neither (as he himself says), Grotius began the task, and the result of his labours is before us, in his famous work *De Jure Belli et Pacis:* a work of amazing industry and book-learning, but which our accomplished Addison would have called "a gaudy structure without a foundation," or, "a rich embroidery on a cobweb." If it be true, as his panegyrists claim for him, that he found the Law of Nations a cold Statue, and embraced it into life; it is equally true that he breathed into

[1] See Roscoe's *Life of Leo X.*; Grotius's *Prol.* 38; Ward's *Enquiry into the Foundation and History of the Law of Nations in Europe from the Time of the Greeks and Romans to the Age of Grotius*, vol. ii. p. 613.

it a guilty Soul. A bold assertion indeed! but I am happily relieved from the charge of originating it, by Puffendorf, Barbeyrac, De Wolff, Bynkershöek, Burlamaqui, and Vattel: in short, by most of the succeeding writers on the Law of Nations. The rays of light that emanated from our great sun of science (if they really did proceed from Bacon) fell upon eyes that had not one point of union. Grotius, either betrayed by the wisdom and equity of his own character[1], or blinded by the philosophy of the Roman Lawyers, or by his own idolatry to Nature, could not, if he would, look through Nature up to Nature's God. What Gnosticism was, what Rationalism is to the Christian Religion, *Grootism* is to the Law of Nations; and to suppose that a man of such transcendant piety and wisdom, as Lord Bacon, could suggest it, does violence to his memory no less than to truth itself. Where do Lord Bacon's works suggest *Grootism?* I answer, nowhere. But—let me write of Grotius with more

[1] Bishop Hurd.

becoming reverence: for I can withal heartily concur with an admiring world in saying—

. . . . "Clarum et venerabile nomen,
Gentibus, et multum nostri quod proderat orbi!"

Now, what is this *great ligament of mankind*[1]?—this common law of the world?—this code of public instruction which defines the rights and prescribes the duty of nations in their intercourse with one another[2]? "Whether (says one of the ablest and most accomplished writers on the subject[3]) the law of nations is merely the law of nature, as it concerns man and nothing more; or whether it is not composed of certain Institutions founded upon consent, [has been for ages a moot point.] . . . . The lawyers and philosophers of antiquity, the Oracles of the Digest, and, in modern times, Hobbes, Puffendorf, Burlamaqui, and others, support the former opinion: Suarez, Grotius, Huber,

[1] Burke's *Letters on a Regicide Peace.*

[2] Kent's *Commentaries on the American Law*, p. 1.

[3] Ward, *On the Law of Nature and Nations*, ch. 1.

Bynkershöek, and, in general, the more recent authors declare the last." This is an able outline: but it is not large enough to include those who reject both, and assert the *Divine Will* as the source of all moral obligations. Again, it seems to take little or no account of those, who have not separated it from, but included it in, the code of *general ethics.* I will, therefore, adopt the following method:—

1. The ancient philosophers[1], who say that the law of nations is merely the law of nature, as it concerns man and nothing more.

2. Those who simply vindicate the *Divine Will* as the source of the law of nations[2].

3. Those who admit the Divine Will as the source of the law of nations, but assert that, as a source of man's moral obligation, practically it is *too general or remote*[3]; or refer the final determination of

[1] Aristotle, Plato, Cicero, and the "Oracles of the Digest."

[2] Coccejus; see also Bodinus, Leibnitz, Pallavicini, Shute, &c.

[3] Löefler.

what is just or unjust, the right or wrong of every human action, to the *Intellect* or *Reason* of man; or, as some express it, to the *expediency* or to the *tendency of human action*[1].

4. Those who assert that nations are *moral persons*, but that the offices prescribed to individuals, when applied to states, put on a new form[2].

5. Those who say that there is a law of nature, one, universal, and immutable; but assert that there is also a *secondary law of nature*, to which they give the name of *positive law of nations*. This secondary law (say they) derives its being and authority from the will of that society out of which it springs, and (*etsi Deus non sit*— even supposing there is no God) is obligatory so long as that will continues[3].

6. Those who assert that the law of

[1] Barbeyrac, Heineccius, Burlamaqui, Wicquefort, Bynkershöek, Paley, Ward, MacIntosh, Manning.

[2] Hobbes, De Wolff, Vattel; *semble* also Kent and MacIntosh.

[3] Grotius, Puffendorf, Sir William Blackstone, Martens.

nature is that from which the law of nations springs, but is *per se* insufficient; requiring *the aid of Revelation* to perfect it, as the source of moral obligation[1].

This outline of their various doctrines shows how essentially they differ from one another, not on mere matters of form, but on the fundamental verities of the science itself. On reading them one cannot help thinking of the conduct of the Brobdingnagian Sages respecting the *moral entities* &c. of *Quinbus Flestrin*[2]: with this difference, however, in favour of the Natural Philosophers of that renowned nation, that the *relplum scalpath* they arrived at was, though wrong, unanimous; whereas the professors of the law of nations seem to agree in nothing, but in condemning as *chimerical*[3] the dogmas of their predecessors. Articles of impeachment, as the amusing Satirist informs us, were drawn

[1] Ward.

[2] See Puffendorf's *Specimen controversiarum circa Jus naturale nuper motarum;* also his dissertation *On Moral Entities.*

[3] Barbeyrac.

up against the *Man Mountain* for carrying the doctrines of the law of nature beyond the prescribed limits of convention; but the supposed delinquent fled from justice, and the case was adjourned sine die[1]. Now, as regards these professors of the law of nature and nations, were I, as an English lawyer, consulted, the following passages from their works would be underscored: which, I venture to think, would be amply sufficient for their conviction and condemnation in any Court of Justice in the wide world—whether under the sanctions of our Holy Gospels, of the Ordinances of the Koran, of the Talmud, or of the Institutes of Tamerlane.

"Every independent Commonwealth has a right to do what it pleases to other Commonwealths."[2]

"That which is reputed the right or law of nations in one part of the world is not so in another."[3]

"No action is moral without the approbation of the Intellect."[4]

"The Will of God is *another* rule of human

[1] *Gulliver's Travels.*
[2] Hobbes's *De Cive*, ch. 2.
[3] Grotius.
[4] Heineccius.

action; *another* principle of morality, obligation, and duty."[1]

"Whatever is expedient is right."[2]

"The obligation to perform the offices of humanity is solely founded on the nature of man."[3]

"It is naturally lawful to make use of poisoned weapons in war."[4]

"A nation of men has a right to procure women, who are absolutely necessary to its preservation; and if its neighbours who have a redundancy of females refuse to give some of them in marriage to these men, the latter may have recourse to force."[5]

"He who is in want of everything is not obliged to starve, because all property is vested in others."[6]

So then, according to some of these men, murder, rape, theft, are (amongst other things) by the law of nature and nations justifiable! Nature, to whom they appeal with so much familiarity, shrinks back upon herself at the very sound of such words! Murder, rape, and theft, agreeable to the nature and condition of man! If so—if sanctioned by the law of nature—Hobbes

[1] Heineccius.
[2] Paley.
[3] Vattel.
[4] De Wolff.
[5] Vattel.
[6] Ib.

was not far wrong when he said—"that war is the *natural* state of man, and that men horde together for fear of one another." I know of no sentiment in all that man's writings so detestable as some of these selected.

CHAPTER III.

ANCIENT WRITERS.

But let us inquire more minutely into their views, and learn wisdom from their follies. Firstly, then, of the Ancient Philosophers. No Greek nor Latin treatise on the subject has survived the wreck of the ancient world. Aristotle composed one on the laws of war, but we only know it by its title[1]. A grave doubt, indeed, has been suggested, whether the subject was ever, in the old world, separated from *general ethics*, and formed an independent science[2]. But in the History of Greece there are the strongest traces of a law of nations[3]. What, for instance, was the object of the Amphictyonic Council? and, with the Ro-

[1] Δικαίωματα τῶν πολεμῶν.

[2] See MacIntosh, p. 17. Story's *Conflict of Laws*, and Kent's *Comm.*, Pt. 1, Lect. 1.

[3] Thucyd. C. 5. 18.

mans, what was the Fecial Law? The *Feciales* or *Fetiales* were Ministers of Religion, or sacred persons whose duty it was to declare war, conclude treaties of peace, form and abjure alliances, send ambassadors, and so forth. The *Collegium Fecialium* was instituted by Numa Pompilius; and, according to Dionysius of Halicarnassus, the design of it was borrowed from Greece. But (assuming its origin fabulous[1]) the *Feciales* were, without doubt, in Livy's time, the *Priesthood of the law of nations.* Would to heaven there was such an Institution now! Could Paganism endure it, and Christianity not?

"O shame to men! devil with devil damn'd
Firm concord holds; men only disagree
Of creatures rational, though under hope
Of Heavenly Grace! and, God proclaiming Peace,
Yet live in hatred, enmity, and strife
Among themselves, and levy cruel wars,
Wasting the earth, each other to destroy:
As if (which might induce us to accord)
Man had not hellish foes enow besides
That, day and night, for his destruction wait."[2]

[1] Kent.

[2] Milton's *Par. Lost*, b. ii. v. 500.

Of commentators on the modern science I have, in a former page, taken a bird's-eye view. But I will now descend from generals to particulars, beginning with

Grotius—the reputed father of the present system,

. . . . "By merit raised
To that bad eminence."[1] . . . .

The learned Coccejus embodies the sentiments of Grotius thus:—"Grotius convenientiam aut inconvenientiam necessariam cum naturâ sociali modum probandi constituit, *etsi Deus non sit.*" This expanded and explained by the whole context of Grotius' work means, that there is a law of nature (one and immutable), and a secondary law of nature, to which he gives the name of *positive Law of Nations*—a law derived from social nature; and whatever (says he) has a necessary agreement or disagreement with this sociality is right or wrong. "That great man (says *Vattel*), as ap-

[1] Hugo de Groot, or Grotius, was born at Delft, in 1583, and died in 1645.

pears from many passages in his excellent work, had a glimpse of the truth; but, as he had the task of extracting from the rude ore, it is not surprising that he could not always acquire those distinct ideas so necessary in the science."[1] *Barbeyrac* declares this positive Law of Nations distinct from the Law of Nature a *chimera*. The learned *Heineccius* exclaims, "I am amazed not only at Grotius and Puffendorf but at many of the ancients being taken with the principle of sociality!" And who re-echoes not this sentiment of amazement when he sees, that the *ignis fatuus* of sociality misled even Grotius to assert this (amongst other things) as a rule of social life—"what is reputed the right or law of nations in one part of the world is not so in another!"[2] How the language of the heathen puts the language of the Christian to confusion! "Nor shall there be one law at Rome, another at Athens, one now, another then, but one everlasting

[1] Vattel, Pref. vi.

[2] Grotius, b. 1, ch. 1 and 14.

immortal law shall prevail over all nations, and in all times, and of all there shall be one common, as it were, Lord and Ruler —God," is the morality of Cicero. The morality of the Pagan Philosopher is the morality of the Universe; the morality of Grotius is a geographical morality differing with the signs of the zodiac, with time, place, and circumstance, and without fixity or foundation, but on the moving quicksands of Human Will. Taking the volume of Grotius' life in my hands, I conclude him to have been one of the most truly pious and best of men. But that he did attempt to place the social world on the back of the fabled elephant, and the elephant on the tortoise, and the tortoise upon nothing—to build up a system of International Law, really involving a negation of the Divine Will, as the source of all moral obligation (what Burke called *Atheism by Establishment*[1]), is what his warmest admirers cannot deny. Indeed, had he lived to witness the French Re-

[1] *Letters on a Regicide Peace.*

volution of 1793, he himself must have owned it. Had Coccejus written no other sentence than the following, he would have deserved the thanks of all mankind. *Nulla profanior et in vitâ humanâ perniciosior, quæque profanis latius fenestram eludendo juri naturali aperiat, sententia est, quam illâ Grotii Prol. s.* 11, *dari jus Naturæ etsi Deus non sit*[1]. I am much mistaken if our own learned *Butler* had not *Grotius* more than *Des Cartes* in view, when he alludes to "certain speculative world tinkers[2], and that idle and not very useful employment of forming imaginary models of a world, and schemes of governing it."

The subdivisions of Grotius—*external, internal, necessary and Divine voluntary* law, *expletive justice*, and the like, I purposely omit, as they will be indirectly explained by others in the course of this work; and because, I think, it is high time, for the advancement of truth, that all such sublimated subtleties, such foppe-

[1] Coccejus, s. 39. [2] Butler's *Analogy*.

ries of the schools, should be thrown as playthings to the idle winds.

PUFFENDORF next claims our attention[1]. Coccejus likewise embodies his principles so well that I will give them, as before, in his words.—"Puffendorf supposes the Deity as the constituent principle, but says, that from the custody of society enjoined by the Deity all human duties can be derived, so that those things are prohibited by the Deity which injure society and nothing more."[2] Puffendorf, then, follows in the wake of Grotius thus far, that from society or sociality, as from a self-sufficient source, all human obligation flows: with this difference, however, that he does admit the Deity into *some* share of the moral government of the universe. *Ward* says, that Puffendorf has written a supplement to Grotius, and differs from him only in method. This, I think, is not correct, for he expressly admits the Divine Will as

[1] Samuel Puffendorf was born at Chemnitz, in Saxony, in 1632, and died at Ratisbon in 1689, where he was ambassador from the King of Denmark.

[2] Coccejus, 2, 3.

the primary source of all moral obligation: he also asserts that states are *moral persons*. In these two essential points he certainly differs from Grotius.

ZOUCHE[1]—a very distinguished civilian of our own Bar—calls Gentilis and Grotius the *Coryphæi* of the Law of Nations[2]; and adopts the latter as the Gamaliel of his studies. He was Professor of the Law in the University of Oxford, and has written much and well. *Juris et Judicii Fecialis, sive Juris inter gentes*, is the title of one of his works on International Law. Particular questions, such as property in the sea, he discusses with great ability and learning. His *Solutio quæstionis veteris et novæ, sive de Legati delinquentis judice competente dissertatio*, may at all times be read with great profit: and, since the expulsion of our ambassador from Spain, by Englishmen with increased interest[3].

[1] Richard Zouche was born at Ansley, in Wiltshire, about 1590, and died in 1660.

[2] Gentilis supposed the Roman Civil Law to be the Law of Nations.

[3] Mr. Henry (now Sir H.) Bulwer.

Coccejus[1], so often referred to, demonstrated, with a master mind, the Divine Will (*Voluntas Dei*) to be the source (*fons et principium*) of the Law of Nations. His *Vindiciæ* contains some severe strictures on Grotius.

Löefler soon followed, and had the hardihood to assert, admitting the conclusiveness of Coccejus's reasoning, that the Divine Will was too *general* and *remote* to be regarded as a rule of human action.

Wicqueford says, that the Law of Nations holds a middle place between the law natural and the law civil, but nearer to the former extreme[2].

Barbeyrac detected and exposed the errors of Grotius and Puffendorf, whose translator and commentator he is, with a master mind[3]. He says, the fitness or un-

[1] Henry Coccejus was born at Bremen in 1644, and died in 1719.

[2] De l'Amb., l. i. l. 27. Abraham de Wicqueford was born, it is said, at Amsterdam, in 1598, and died about 1682.

[3] John Barbeyrac was born at Begiers in 1674, and died in 1747.

fitness of things, which they contend for, may be termed the *natural morality* of actions, and is, indeed, a reason for acting or not acting; but emphatically denies that it is such a reason as imposes that indispensable necessity which is implied in the idea of an obligation. This necessity (adds he) can only proceed from a superior; that is, from some Intelligent Being existing without us, who has a power of restraining our liberty and prescribing rules for our conduct[1]. He emphatically declares, also, that the will of God is the source of all duty. *Sans la Divinité on ne voit rien qui impose une necessité indispensable d'agir ou de ne pas agir d'une certain manière. . . . . Il faut donc necessairement poser pour principe que l'obligation de la loi naturelle vient de Dieu même.* "The positive Law of Nations distinct from the Law of Nature (says he) is a chimera." He denies, also, the maxim of Grotius, that the obligation to obey the Law of Nations arises from consent. Having done all this, having

[1] *Notes to Grotius*, vol. i. ch. 1. 10.

given birth to these sublime sentiments, he becomes an Apostate to *Rationalism.*

BYNKERSHÖEK's dogma is that Reason and Custom are the only bases of the Law of Nations[1].

DE WOLFF's[2] book is entitled, "*Jus gentium methodo scientifico pertractatum, in quo jus gentium naturale, de eo quod voluntarie pactitie et consuetudinarie est, accuratè distinguitur.*" His leading maxim is, that nations are to be regarded as individuals living free in a state of nature. That (in contradiction to Grotius) the Law of Nature and Nations is one; but as individuals differ in their nature and essence from nations, it is not the same throughout[3]. Hobbes had taught this before; but so admirable a doctrine—that there is one and the same law for individuals and nations, was worthy of being repeated. In its ap-

[1] Cornelius Van Bynkershöek was born at Middleburg, Zealand, in 1673, and died in 1793.

[2] Christianus De Wolff was born at Breslau in 1679, and died at Halle in 1754.

[3] See Burke's *Second Letter on a Regicide Peace,* as to individuals and states.

plication, however, he jumps sheer over the crystal battlements of Truth into the Serbonian bog of Human Intellect; after floundering about in it, he seems at last to settle, in the manner of Heineccius, on this great paradox—that no action is moral that the Human Intellect does not approve of.

Heineccius[1] has been pronounced by Sir James MacIntosh (no mean judge!) to be the best elementary writer on any subject. His book is entitled *Elementa Juris Naturæ et Gentium*. Coccejus is a great favourite with him. The doctrine of the Divine Will, which he had so admirably vindicated, is defended with great power. "The Divine Will alone (says he) is the rule of human actions, and of every natural obligation, and the principle of all justice . . . ., and there is no reason why men should either wish or be able to withdraw their allegiance from Heaven . . . .; men act under a threat of punishment, or a reward proposed."[2] He then adds—

[1] John Gottlieb Heineccius was born at Eisenberg in 1681, and died in 1741.

[2] Lib. i. ch. iii. § 60. 62, 63.

"But I am unwilling to confound the rule of human actions, and the principle of the Law of Nature!" This rule of human action, with the Deity for its author, is subjected to the Intellect of man! "The Intellect without whose consent an action is not moral!" He ridicules with great power the *principium socialitatis*, or the *custodia socialitatis*, of Carneades, Grotius, and others.

BURLAMAQUI[1] says, that the general principle of the Law of Nations is nothing more than the general law of sociality, which obliges all nations that have any intercourse with one another to observe the duties to which individuals are naturally subject. And in the end comes to the startling conclusion, that right is only that which Reason approves! He claims, in short, for Reason, some such imperial prerogative as Heineccius claims for the Intellect. What an avowal of moral heresy is involved in the following:—

[1] John James Burlamaqui was born at Genoa in 1694, and died in 1750.

"Reason being the first rule given, it is also the first principle of morality, and the immediate cause of all positive obligation. The will of God is another rule of human action, another principle of morality, obligation, and duty."

VATTEL has been styled, but unfairly I think, the Abridger of Puffendorf[1]. He is an enthusiastic admirer of De Wolff, and substantially agrees with him. But there are passages in his book, not to speak of his good and pleasing style, worthy of all acceptation; such as this—"*It is impossible that nations should mutually discharge all these several actions, if they do not love each other. This is the pure source from which the offices of humanity should proceed.* They will retain the character and perfection of it. Then nations will be seen sincerely and cheerfully to help each other, earnestly to promote their common welfare, and cultivate peace without jealousy and distrust."[2] He had, as he says of Grotius[3],

[1] Emmerich Vattel was born at Couret (Neufchatel) in 1714, and died in 1767.

[2] Vattel, b. ii. ch. 1. 11. 16. [3] Pref. vi.

a glimpse of the truth, but was afraid or unable to look upon it.

MONTESQUIEU says, "*Le droit des gens* est naturellement fondé sur ce principe, que les diverses nations doivent se faire, dans la paix, le plus de bien, et dans la guerre le moins de mal, qu'il est possible, sans nuire à leurs veritables intérêts.

"L'objet de la guerre c'est la victoire; celui de la victoire la conquête; celui de la conquête la conservation. De ce principe et du précédent doivent dériver toutes les loix qui forment *le droit des gens*.

"Toutes les nations ont un droit des gens; les *Iroquois* même, qui mangent leurs prisonniers, en ont un. Ils envoient et reçoivent des embassades; ils connoissent les droits de la guerre et de la paix: le mal est que ce droit des gens n'est pas fondé sur les vrais principes."[1]

VON MARTENS was professor of public law in the University of Göttingen about the close of the last century. He seems

[1] *De l'Esprit des Loix*, liv. 1, ch. 3. Charles de Secondat, Baron de la Brede et de Montesquieu, was born near Bordeaux in 1689, and died in 1755.

to be a great favourite in America. He composed "a compendium of the law of nations, *founded on the treatises and customs of the modern nations of Europe;* to which is added, a complete list of all the treaties, conventions, compacts, declarations, &c., from the year 1731 to 1788, inclusive, indicating the several works in which they are to be found. Translated, and the list of treatises, &c., brought down to June, 1802, by *William Cobbett.*" It is a very able summary of the law of nations; but of the German School, and of the worst—the school of Grotius, especially in his dogma, on the positive law of nations. Besides, as it only professes to be a *compendium*, founded on the treaties and customs of the modern nations of Europe, it is necessarily imperfect, as compared to the works of others who have enlarged their views, and their inquiries into the length and breadth and depth and height of the moral law.

Dr. Paley has not written on the law of nations, as distinct from the general code of ethics, but his sentiments thereon

are too forcible to be omitted, and too clearly expressed to be misunderstood[1]. His words are these:—

"As the will of God is our rule, to inquire what is our duty or what we are obliged to do in any instance, is, in effect, to inquire what is the will of God in that instance, which, consequently, becomes the whole business of morality.

"Now there are two methods of coming at the will of God on any point:—

"1. By his express declarations when they are to be had, and which must be sought for in Scripture.

"2. By what we can discover of his designs and disposition from his works, or, as we usually call it, the light of nature.

"And here we may observe *the absurdity of separating natural and revealed religion from each other. The object of both is the same—to discover the will of God,* and, provided we do but discover it, it matters nothing by what means."

[1] William Paley was born at Peterborough in 1743, and died in 1805.

His remarks on the commentators on the Law of Nations are well worthy of attention. "In the treatises I have met with (says he) upon the subject of morals, I appear to myself to have remarked the following imperfection,—either that the principle was erroneous, or that it was indistinctly explained, or that the rules deduced from it were not sufficiently adapted to real life and to actual situation. The writings of Grotius, and the larger work of Puffendorf, are of too *forensic* a cast; too much mixed up with Civil Law and with the jurisprudence of Germany, to anwer precisely the design of a system of ethics; the direction of private conscience in the general conduct of human life. Perhaps, indeed, they are not to be regarded as institutes of morality, calculated to instruct an individual in his duty so much as a species of law books and law authorities suited to the practice of those courts of justice whose decisions are regulated by general principles of natural equity, in conjunction with the maxims of

the Roman code, of which kind, I understand, there are many upon the Continent. To which may be added, concerning both these authors, that they are more occupied in describing the rights and usages of independent communities, than is necessary in a work which professes not to adjust the correspondence of nations, but to delineate the offices of domestic life. The profusion also of classical quotations, with which many of their pages abound, seems to me a fault from which it will not be easy to excuse them. If these extracts be intended as decorations of style, the composition is overloaded with ornaments of one kind. To anything more than ornament they can make no claim. To propose them as serious argument, gravely to attempt to establish or fortify a moral duty by the testimony of a Greek or Roman poet, is to trifle with the attention of the reader, or, rather, to take it off from all just principles of reasoning on morals. Of our own writers in this branch of philosophy, I find none, that I think, per-

fectly free from the three objections which I have stated. There is, likewise, a fourth properly observable almost in all of them, namely, that *they divide too much the law of nature from the precepts of revelation; some authors industriously declining the mention of Scripture authorities*, as belonging to a different province: and others reserving them for a separate volume; which appears to me much the same defect, as if a commentator on the laws of England should content himself by stating upon each head the common law of the land, without taking any notice of Acts of Parliament; or should choose to give his readers the common law in one book, and the statute law in another." To all this, I say Amen.

Sir James MacIntosh's[1] maxim seems to be, that states are moral persons; but whether, as De Wolff asserts, that the moral law is identical to a given point only, and then divides, does not appear. He asserts

[1] Sir James MacIntosh was born at Aldourie, on the banks of Loch Ness, near Inverness, in 1765, and died in 1832.

also, that the *beneficial tendency* of human action is the foundation of rules, and the criterion by which habits and sentiments are to be tried. "But (adds he) it is neither the immediate standard, nor can it ever be the principal motive of action. An action to be completely virtuous must accord with moral rules, and must flow from our natural feelings and affections, moderated, matured, and improved into steady habits of right conduct."[1] As his elegant little fragment on the subject does not profess to give more than a mere outline of a course of lectures to be delivered by him, and as that course of lectures has not been preserved, I am unable to declare in a more positive manner what his views really were.

WARD may not improperly be styled the Historian of the law of nations[2]. His treatise is the work of a thinking man, of a

[1] *Discourse on the Study of the Law of Nature and Nations*, p. 46, 12mo, Lond., 1828. See, also, vol. i. *Encyclopædia Brit., Dissertation on the Progress of Ethical Philosophy.*

[2] Robert Ward was an English barrister (1795).

most accomplished gentleman and scholar. It is alike free from the ponderous book-learning of Grotius, the hard crabbed style of De Wolff, Heineccius, &c., and the exuberant elegancies of MacIntosh; any one may read it, and any one may understand it. His theory is, that religion and the moral system engrafted on it, *in addition* to the law of nature, are the foundations of the law of nations;—that this law of nations is not the law of the world, but only of particular classes of nations. He says of the state of nature, that he can hardly imagine it to be more than the wild images of poetry; or at least an invention for the more convenient deductions of certain reasonings on law and right. He looks upon Grotius, De Wolff, and Vattel with great distrust.

KENT's *Commentaries on the American Law* is the production of a truly judicial mind. He devotes several *lectures* to the law of nations. With him, in *Ward's* flowing language, the Philosopher of Delft is a *splendid luminary*, whose orb will never set.

In my judgment, the man who could read, to a rising generation, such lessons of wisdom as the following (original or borrowed) much more deserves the lofty praise. "There has (says *Kent*) been a difference of opinion among writers concerning the foundation of the law of nations. It has been considered by some as a mere system of positive institutions, founded upon consent and usage; while others have insisted that it was essentially the same as the law of nature applied to the conduct of nations in the character of moral persons, susceptible of obligations and laws. *We are not to adopt either of their theories as exclusively true.* The most useful and practical part of the law of nations is, no doubt, instituted in positive law, founded on usage, consent, or agreement. But it would be improper to separate this law entirely from natural jurisprudence, and not to consider it as deriving much of its force and reason, the same views of the nature and constitution of man, and the same sanction of Divine Revelation, as those from which

the science of morality is deduced. *There is a natural and a positive law of nations.* By the former every state, in its relation with other states, is bound to conduct itself with justice, good faith, and benevolence; and this application of the law of nations has been called by Vattel the *necessary* law of nations, because nations are bound by the law of nature to observe it; and it is termed by others the *internal* law of nations, because it is obligatory upon them in point of conscience. We ought not, therefore, to separate the science of public law from that of ethics, nor encourage the dangerous suggestion, that governments are not so strictly bound by the obligations of truth, justice, and humanity, in relation to other powers as they are in the management of their own local concerns. *States or bodies politic are to be considered as moral persons having a public will, capable and free to do right and wrong, inasmuch as they are collections of individuals, each of whom carries with him into the service of the community the same binding law of morality and religion which ought to control his*

conduct in private life. The law of nations is a complete system composed of various ingredients. It consists of general principles of right and justice, equally suitable to the government of individuals, in a state of national equality, and to the relation and conduct of nations, of a collection of usages and customs, the growth of civilization and commerce, and of a code of conventional or positive law. In the absence of these latter regulations, the intercourse and conduct of nations are to be governed by principles fairly to be deduced from the rights and duties of nations and the nature of moral obligations; and we have the authority of the lawyers of antiquity, and of some of the first masters of the modern school of public law, for placing the moral obligations of nations and of individuals on similar grounds, and for considering individual and national morality as parts of one and the same science."

MANNING'S[1] *Commentary on the Law of Nations* is described by Kent as "a work

[1] W. O. Manning is an English barrister (1839).

of great excellence." It is a work of great excellence. His doctrine is, that the law of nature, by the obligations of which states are bound, is identical with the Divine Will, which is to be discovered from express revelation, or, in its absence, by reason. That Christianity reveals a *general* system of morals; but the application to particulars is left to reason. There seems to be no substantial difference between Barbeyrac and Manning.

The fable of the Kilkenny cats was never so happily illustrated as in these few writers on the law of nations. In this summary I have purposely omitted, for obvious reasons, such works as those of Hobbes, Cumberland, Tyrrel, Hutchinson and Hume *on Human Nature*, Tucker's *Light of Nature*, Smith's *Theory of Moral Sentiment*, Lieber's *Manual of Political Ethics*, MacIntosh's *Dissertation on the Progress of Ethical Philosophy*, and the like[1].

[1] See also the works of Budus and Bynkershöek's *Quæstiones Juris Publici;* Selden's *De Jure Naturæ et Gentium*

Seeing, then, this want of uniformity, I should rather say, this violent conflict of opinion upon the very fundamental verities of the science, what are we to do? Are we to fold our arms in despair? Is there no truth in it? is it all a *chimera*, as Barbeyrac calls the discoveries of Grotius? This contrariety of sentiment shows, if it shows no more, that neither Ulpian, nor Papinian, nor yet Hugo Grotius, have been sent down from heaven to prescribe laws for the world; in other words, "that they have not superseded the necessity of a new attempt to lay before the public a system of the law of nations."[1]

The matter, then, is left at large: and, being so, where are even the wisest statesmen to look for the star that is to lead them to the truth? in the Christian or in the Heathen world? in the Holy Scrip-

juxta disciplinam Hebræorum; Fulbeck's *Pandect of the Law of Nations;* Zentgrave's *De Origine, Veritate, et Obligatione Juris Gentium;* Mævii *Prodromus Jurisprudentiæ Gentium Communis;* S. Rachelius's *De Jure Naturæ et Gentium;* I. Wolfgang's *Textoris Synopsis Juris Gentium.*

[1] MacIntosh, p. 29.

tures? in the code Justinian? in the Blundecrall? or amid the conflicting elements of these *moral heresies?* Plato and Hobbes say, that it is impossible for the disorders of states and change of government by civil war to be taken away till sovereigns be philosophers. However desirable this may be, there is another equal, if not paramount to it,—that the people raise themselves to that height whence they ought to survey so vast a subject. Above all, so as to discover truth from falsehood, and a Hooker from a Hobbes.

Take my word for it, a happy alliance between faith and philosophy may be formed and concluded; and then, but not till then, will the foundations of the Universal Peace Congress of nations be laid—a Peace Congress with the Divine Will for its author, universal love for its matter, and the everlasting happiness of mankind for its end.

BOOK II.

CHAPTER I.

Now turn to the Book of Life, and you will find the Alpha and Omega of all things: also the key to all those subordinate questions which affect the world at this moment; such as war, papal aggression, colonization, intervention, free trade, extradition, and the like.

"Gen. chap. i. v. 1. In the beginning God created the heaven and the earth."

"26. And God said, Let us make man in our image, after our likeness: and let them have dominion over the fish of the sea, and over the fowl of the air, and over the cattle, and over all the earth, and over every creeping thing that creepeth upon the earth.

"27. So God created man in his own image, in the image of God created he him; male and female created he them.

"28. And God blessed them, and God said unto them, Be fruitful and multiply, and replenish the earth, and subdue it: and have dominion over the fish of the sea, and over the fowl of the air, and over every living thing that moveth upon the earth.

"29. And God said, Behold, I have given you every herb bearing seed, which is upon the face of all the earth, and every tree in the which is the fruit of a tree yielding seed; to you it shall be for meat."

"Ch. ii. v. 18. And the Lord God said, It is not good that the man should be alone; I will make him an help meet for him."

"21. And the Lord God caused a deep sleep to fall upon Adam, and he slept: and he took one of his ribs, and closed up the flesh instead thereof;

"22. And the rib, which the Lord God had taken from man, made he a woman, and brought her unto the man."

In these few verses lie a few facts within the reach of the plainest understanding: the creation of the first man, and the creation of the first woman, and why she

was created; he for God only, she for God in him; having nothing merited, nor could perform ought whereof he had need[1]. A Divine Revelation was made to them. God said unto them, "Be fruitful, and multiply, and replenish the earth, and subdue it." He gave them universal dominion over the fish of the sea, and over the fowl of the air, and over every living thing that moveth upon the face of the earth; with *universal love* as the law of their being, with *universal dominion* (one restraint excepted) lord of the world besides. Neither man nor woman was the subject of dominion. This was the beginning of all things—of human existence, of social union, and of the dominion mankind has over the land, and sea, and all things contained therein. All these were at once perfect in our first parents. Had they not been disobedient to the Divine Will: had they not transgressed this will for one easy prohibition: that immortal life, with which they were

[1] Milton, Book iv. 299.

invested, would have endured for ever. They were in true filial freedom placed: but they transgressed, and fell. By that fall, however, Adam lost not his help meet, nor was their dominion over earthly things taken from them; she for her transgression, instead of being a help meet, and in a state of perfect equality, was reduced to the will of Adam; for his offence the ground was cursed, and he was condemned to eat of it in labour and sorrow. They lived together after they were driven from Paradise: they increased and multiplied; they exercised dominion, in all its primary plenitude, over the land and sea. The first man, by the Divine Will, lived 930 years, and then he died.

To Noah and his sons, on the regeneration of the world after the Deluge, was a Revelation made, like that made to Adam and Eve. He *said unto them*, "Be fruitful, and multiply, and replenish the earth." Unto their hands were delivered all that moveth upon the earth, and all the fishes of the sea, and (enlarging the original

blessing) every moving thing that liveth as meat for them.

In the history of the human race, then, so far, is recorded individual and social life, its source, principle, and progress. The source of all dominion or property is also here plainly set before us.

CHAPTER II.

THE BEGINNING OF NATIONS.

We come now to the Tenth Chapter of Genesis: the most ancient and the most valuable historical record in the world. Here are we told that Noah had three sons—Shem, Ham, and Japheth; and that by them were the nations divided in the earth after the flood. The migration of the three primitive families took place from the central regions of ~~America~~, Africa, Mesopotamia, and Assyria: and thence was the whole earth overspread by them. In the map before me, entitled *The World as known to the Ancients* (showing the dispersion and settling of nations, and the descendants of Noah), it appears that the descendants of Japheth inhabited Europe

and the north: those of Shem, Asia and to the east: those of Ham, Africa. But whatever be their true position on the map, one thing is clear (notwithstanding the present variety of colour, language, custom, religion, and the like), that the human species are all brethren, of one family, and derived from one common stock. *This is the origin of nations.* In the presence of these facts pause awhile, my friend, and reflect upon one and all of those great controversies which still agitate the civilized world.

The union of the human race and dominion, then, are immediately of Divine institution: some will have it—of Divine *approbation!* Did man create himself, and God approve? Did man spring from chance, and God approve? Did man make woman, and God approve? Did man assume dominion, and God approve? No! God willed, and man became a living soul. God willed, and man had a help meet. He willed, and they had dominion over all things.

CHAPTER III.

THE LAW OF NATURE.

MANY assert, as already stated, that the law of nature is the source of the law of nations. What is meant by this *law of nature?* "The only distinct meaning of the word (*natural*) is, *stated, fixed,* or *settled;* since what is natural as much requires and presupposes an intelligent agent to render it so, that is, to effect it continually or at stated times, as what is supernatural or miraculous does to effect it for once."[1] No doubt

> "The first Almighty cause
> Acts not by partial, but by general laws."[2]

The fall of the apple, which illumined what was dark in Newton, was by a gene-

[1] Butler's *Analogy,* pt. 1, ch. i.
[2] Pope's *Essay on Man.*

ral law the law of gravitation: a general law ruling alike, so far as we know, all inert bodies, and the sun, and the moon, and the stars. In the *moral system of nature* (or Locke wrote in vain) a stated, fixed, and settled order reigns. Perhaps not the same, for things spiritual and material seem to gravitate to different centres: but still all is under the law of order. From the Author of Nature all things

> "Enjoy the power that suits them best."
>
> * * * *
>
> "God in the nature of each being founds
> Its proper bliss, and sets its proper bounds."

And with no less wisdom was it said:—

> "The state of nature is the reign of God."[1]

But what do they mean who contend that, by force of these general laws (be they known as the *law of nature*, *course of nature*, or, as applied to man, *human nature*,) creatures would of themselves (*etsi Deus non sit*) fulfil the ends of their being[2]? *Vox et præterea nihil!* These Naturists are

[1] Pope's *Essay on Man.*

[2] Grotius, see p. 16.

safe in their conceits, except from the charge of infidelity! They are, in one sense, safe, because their hypothesis can never, according to their own showing, be refuted by actual experiment. The habit of setting hypothetical possibility against acknowledged certainty may, in some things, be allowed; but when their hypothesis, or thing supposed, is morally and physically impossible, as, for instance, that there is no God, no author of nature, no moral governor of the world, the best way is, not to dispute with them (as there is no disputing with men who deny first principles), but to leave them to the pity of their fellow-creatures, and to the mercy of Him whose laws have been outraged by their *reasoning pride.*

Now, do not misunderstand me. I do not disregard these general laws: heaven forbid! I hope I view the course of nature aright, and, as a rational and responsible creature, make a proper use of what necessarily is the appointment of the Almighty. But I cannot help asking myself, whenever they

come in conflict, what is the value of all these laws in the presence of the Will of Him who put them in motion?—at whose command the sun stood still upon Gibeon, and the moon in the valley of Ajalon; at the stretching out of whose arm seas stood on heap, and rivers flowed with blood; who rained fire and brimstone upon Sodom and Gomorrah; who darkened all the land of Egypt with locusts; at whose word even the dead arose from their graves. What, I ask again, is the value of these general laws, when I see them thus superseded, varied, and reversed? Nay, what are their value when we regard only our own knowledge of them—a knowledge that seems to partake much of the changes of the world's fashions?—when to-day we see the *Copernican* system admired, to-morrow its *author* condemned by the Inquisition; *Des Cartes* to-day lord of the ascendant, to-morrow laughed at; and Newton—even Newton, to live on the sufferance of Mechanics' Institutes or the breath of a National Directory, like that which, in the centre of

civilization, solemnly and deliberately declared that there was no God, and set up a common strumpet as the Goddess of Reason for men to worship? I re-assert, then, that the DIVINE WILL is the only source and principle of all moral obligation: and, as a consequence, the only source and principle of the law of nations. I do not say that, *in aid* of our discovery of that will, the whole *analogy of nature* may not be appealed to: but this confusion of matter and mind, of *natural and moral philosophy*, is *always* to be feared; for I generally find that auxiliaries called in from natural philosophy, as auxiliaries in the political world do, make a permanent lodgment where they were only intended to be used as friends. In moral philosophy—more especially when the Divine will has been expressly *revealed* to man—they are but treacherous auxiliaries, if, indeed, they can be used at all. *I mean to demonstrate by-and-by that individuals and nations, in their intercourse with one another, have light of another kind to walk by.*

Before I do so, however, I could wish to say a word or two on the phrase—*a man is a law unto himself*[1]. I will again refer to the learned Butler for an explanation. "As the idea of a civil government implies in it united strength, various subordinations, under one direction, that of the supreme authority, the different strength of each particular member of the society not coming into the idea; whereas, if you leave out the subordination, the union, and the one direction, you destroy and lose it: so reason, several appetites, passions, and affections, prevailing in different degrees of strength, is not that idea or notion of *human nature*, but *that nature* consists in these several principles, considered as having a natural respect to each other in the several passions being naturally subordinate to the one superior principle of reflection or conscience. *Every bias, instinct, propension within, is a real part of our nature, but not the whole: add to these, the superior faculty, whose office it is to adjust, manage,*

[1] See St. Paul.

and preside over them, and take in this its natural superiority, and you complete the idea of human nature . . . . . And from all these things put together nothing can be more evident than that, exclusive of revelation, man cannot be considered as a creature left by his Maker to act at random, and live at large up to the extent of his natural power, as passion, humour, wilfulness, happen to carry him[1], which is the condition brute creatures are in; but that from *his make, constitution, or nature, he is in the strictest and most proper sense a law to himself.* He hath the rule of right within: what is wanting is only that he himself attend to it."

You will ask—indeed you have a right to ask—in what consists the difference between the Divine will and the law of nature as the source of all moral obligation? A man of law, once upon a time, on hearing the threadbare remark, that there is only a paper wall between the Protestant

[1] This was the *prolific error* of the French Revolution of 1792. See Burke's *Letters on a Regicide Peace.*

and Romish Churches, said, *True! but the whole Bible is written upon it!* So here, there is, perhaps, but a paper wall between the two, but the whole Bible is written upon it. It is the difference of cause and effect; of primary and secondary laws; it is the difference of worldly things and eternal hopes and fears; the difference between worldly interest and everlasting happiness as motives to human action; it is the difference between the Holy Scriptures and Rationalism; between the fixed immutable law of truth and the uncertain ever-progressing knowledge of human fallible beings; the Word of God and the dreams of man as the rules of human conduct. In the one case, we drink the waters of life pure and fresh at the fountain head; in the other, we get them only after they have been troubled by the many tributaries that flow into them from the Sahara of nature.

CHAPTER IV.

RULE OF MAN'S DUTY.

When "natural religion was republished to the world by authority, and with these new lights and other peculiar advantages adapted to the wants of mankind," man of a certainty had not, and perhaps, as a consequence of his fall, could never have discovered the true measure of his duty. Till the Word—the Almighty Word—informed him of it, in the manner hereinafter mentioned, man *did not know it.* It was a *discovery* to him by the Author and Finisher of our faith[1]; and yet, strange to tell, most individuals and nations now-a-days act as if the *new lights* of Christianity had never shone upon them. And, above all, commentators on the law of nations think and write as if they lived

[1] See Locke *On the Conduct of the Human Understanding*, s. 43. (Fundamental Verities.)

tellect of man? And yet we never hear of indefiniteness, remoteness, or the like, urged as an objection to any of them! What can be more vague than Grotius's test of what is and what is not agreeable to the law of nations? Indeed, he is himself compelled last of all to have recourse to *common sense*. What that is, as a rule of human action, or as a rule of anything else, let him who can inform us. What concern *reason and intellect* have in this affair will be explained more conveniently hereafter.

It has, indeed, been contended that all religion is revealed. I decline at present, because it is unnecessary, to advance so far.

And, lastly, I would remark, that whether we ought to obey these commandments because they are commanded by the Supreme Being, or that they are commanded because they are best for us, or as commandments at all, is not very material for me to determine, for either way they contain a plain express revelation of the Divine will; and, therefore, the unerring rule of man's duty—a rule that suffers no

diminution from time, place, or circumstance—a rule for all men in every relation of life—a rule for nations as well as for individuals.

"By the *love of God* I would understand all those regards, all those affections of mind, which are due immediately to Him from such a creature as man, and which rest in Him as their end. As this does not include servile fear, so neither will any other regards, how reasonable soever, which respect anything out of, or besides the perfection of the Divine nature, come into consideration here. But all fear is not excluded, because his displeasure is itself the natural, proper object of fear. Reverence, ambition of his love and approbation, delight in the hope or consciousness of it, come likewise into this definition of the love of God, because he is the natural object of all their affections or movements of mind, as really as he is the object of the affection, which is in the strictest sense called love; and all of these equally rest in Him as their end, and they

may all be understood to be implied in the words of our Saviour without putting any force upon them, for he is speaking of the love of God and our neighbour as containing the whole of piety and virtue."[1]

Self-love and the *love of our neighbour* are described by the same great man thus:— "Self-love is a man's desire for his own happiness; the love of our neighbour is that affection which leads us out of ourselves, and makes us regardless of our own interest, and substitutes that of another in its stead." Affections in perfect harmony, neither to be confounded nor divided[2].

Now the Divine will is either by way of *permission* (whereby the faculty or freedom of action is conceded to us), or it operates by way of *command* or *prohibition*, whereby the necessity of acting or not acting is imposed upon us; hence the obligation and the bond of law[3].

[1] Butler's Sermon *On the Love of God;* see also Burnet's Sermon on the same subject. Matt. ch. xxii.; Luke x.; Rom. xiii.; 1 Tim. i.

[2] Heineccius writes in the same strain.

[3] Coccejus, Q. iv., s. 1.

The two canons (but in reality it is immaterial to determine it now) seem to be *permissive*. How we are to use the faculty or freedom of action which is conceded to us by them; in other words, what our reason, intellect, moral sense, conscience, or by whatsoever name the supreme faculty may be called, has to do with it, will be more fully explained hereafter.

In concluding these bye-remarks I would observe that the philosopher of Malmesbury, in his book on Human Nature, advanced, as discoveries in moral science, that *benevolence* is only *the love of power*, and *compassion* the *fear of future calamity to ourselves*. I will not stop to remonstrate. Should any follower of Hobbes seek for instruction here, to him I say read

"Thou shalt love the Lord thy God, with all thy heart, and with all thy soul, and with all thy mind."

"Thou shalt love thy neighbour as thyself."

To him I say read, read, and be wise.

nation is an union of persons, in obedience to the Divine will, and for the sake of everlasting happiness. Social union is the subject, the Divine will the rule, and everlasting happiness the end.

CHAPTER II.

THE RIGHTS AND DUTIES OF HUMANITY.

To begin with a plain case,—"*Russia* (says Vattel) assisted *Sweden* when threatened with a famine, but refused to other persons the liberty of purchasing corn in *Livonia*, from the circumstance of *herself standing in need of it.*" Now we know what Russia did, and what an individual of a humane turn of mind and ordinary understanding would have done without the aid of rule: but the present state-system seldom presents to the moralist so simple a problem; too often, indeed, facts so tesselated and complicated, that the ablest men feel the want of some safe rule to go by. The two canons supply us with that rule. Let us see: Sweden, in the case proposed, was in want; she applied to Russia for

food; Russia granted it to Sweden, and refused it to (say) *Turkey*. She refused it to Turkey, for fear of famine in her own dominions. There are involved here the rights and duties of humanity: the right of Sweden to ask, the duty of Russia to grant, and, thirdly, the right of Russia to refuse to Turkey what she had granted to Sweden. Did those rights and duties exist? if so, what is the measure of them, supposing they had to be determined *à priori*, as they may be, although not for the reason assigned by Hobbes? Now, apply the second of these two canons, *love thy neighbour as thyself*, and the course of action will be clear. The same commandment which bids us love others, bids others love us; the rights and duties of love, therefore, by force of this canon or commandment, are correlative. Sweden had, under the circumstances, such a right of claim upon Russia. It was the duty of Russia to love Sweden; but how, and to what extent? What is the just measure of this rule? The answer is to be found in the express

words of the canon "Love thy neighbour *as thyself*." Now, love thy neighbour *as thyself* may mean (as the learned *Butler* says) either that we are to bear the *same kind* of affection to others as we do to ourselves; or that the love we do bear to others should have some certain *proportion* or other to self-love; or that it should bear the particular *proportion of equality*, that is, be *in the same degree*[1]. Whether it is to be the same in *degree* or *kind*, as it is to be the same, it is not material now to determine. Russia, in the case proposed, was commanded to love Sweden and Turkey *as she loved herself*. The grant was made to the one, and so the rule was complied with. There was a denial to the other, and yet the canon was not violated,—not violated, because it is necessarily implied under the words *as thyself* (whichever construction be adopted), that a neighbour is not to do itself an injury, not to endanger its own

[1] Sermon on Self-love; see also St. Paul's Epistle to the Ephesians, chap. v. 25.

safety for the sake of another. This is the conclusion that Vattel also arrives at, but from other premises. I would here ask, which rule is easier for us to apply? not to speak of eternal motives being in the one case the inducement to the action, in the other, motives wholly confined to things of this world. In point of certainty and precision, I repeat, not to speak of the transcendent excellence of the holy canon as a rule of human action, there is no comparison. When Henry the Fourth, in the famous siege of Paris, acted so in favour of obstinate rebels bent on his destruction, he evinced this sense in an eminent degree, and at the same time demonstrated to the world how perfectly the exercise of it is in harmony with its best interests.

It may be asked how Russia in the case proposed was to measure her love so nicely as not to offend against the rule by want or excess? I will venture to answer it. Nations must of themselves determine it, just as individuals determine it in their

dealings with one another. The rule is not a whit more uncertain in its application. With like hopes and fears, men in their individual, corporate, or social capacity must act. If they rise above the horizon of their strict duty, they will have their reward; if they sink below from design, they must take the consequences; if they reach it not by accident, they must rely on the mercy and goodness of Him who gave them that law, and who can, as its Lawgiver, remit all penalties annexed to its transgression.

Nations must determine, as individuals determine. I assign them, then, intellect, reason, conscience, moral sense, or the light of nature? Most certainly I do, but not after the manner of Heineccius. He asserts that without the approbation of the intellect no action is moral; and Burlamaqui attributes like properties to reason. With the morality of an act, neither intellect nor reason (theoretic or practical[1]) has, I make bold to say, any such merit. As an act

[1] Aristotle's *Treatise on Government*, b. vii. ch. 14.

agrees or disagrees with the Divine will, as revealed in the two holy canons, it is moral or immoral. In the famous dispute between Carlostadt and Eck at Leipsic in 1519, I should have agreed with the latter in this, that the human will is not merely passive to the power of Divine grace. These are my thoughts as applicable to the matter in hand. As the mind's eye travels over the two holy canons of our duty, it may be the province of the *supreme faculty* in man to put forth or withhold this affection of love. It may be free to obey or disobey the call, but it so acts at its peril. The act that proceeds from or follows a disobedience is *necessarily* wrong. That which follows an obedience is right, but only *accidentally*. When morally perfect, it is so, not because there is any saving merit in the approval of the reason, but simply because the act comes up to the standard required by the rules of our duty. I repeat, then, an action to be completely moral (or, if you will, just or virtuous) must accord with the two canons of Holy Writ, must be in harmony

with the Divine will, as here revealed to man; and any other supposed standard is false and hollow.

Self-preservation is also involved in the case proposed; for *Russia*, while she granted food to *Sweden*, refused it to others, *because she herself stood in need of it*[1]. Now, according to all writers of authority, it is contained under these words—love thy neighbour *as thyself*. If a man were lord of his own life in the same sense as he is the owner of goods, he might, perhaps, do as he pleased with it: but he is not; being so, then, and it being man's duty to love himself, and to love himself *as much* as (some say *more* than) his neighbour, he must defend himself. By not defending his life, he might be guilty of self-murder, and so be guilty of a violation of the Divine will[2]. Again, there would be, in such a case, a wilful sacrifice of life, not for the love of God, but to another's

[1] Page 67.

[2] See Rutherford's *Lex, Rex; or, the Law and the Prince* (Presbyterian Armoury), vol. iii. 2, 30, 31; Butler, *On Self Love;* Paley's *Moral and Political Phil.*, b. iv. ch. 1.

enmity to Him. To offend or kill is not of the nature of *defensive* war, but accidental to it. All the consequences of violence, if this be so, are chargeable on the aggressor. Remember always, that *re-offending* is duty's last resort. When all other means have failed, as persuasion, remonstrance, flight, and the like, then, and not till then (supposing it still to be a *possible* means of self-preservation), does Goliath's sword become justifiable. David's conduct most happily illustrates it: mediation, prayers, remonstrance, flight, and the sword, was the order of his defence against Saul; and, to be right, must be that of all men, whether individuals or bodies of individuals.

CHAPTER III.

CANONS APPLIED TO WAR.

ANOTHER instance of a different kind may be found in *Charlemagne*. "He ravaged *Saxony* with fire and sword, in order to plant Christianity there; while the successors of *Mahomet* were ravaging *Asia* and *Africa* to establish the Koran in those parts."[1] I put this with a view to consider the question of war. I will first observe, that a nation may be the first to resort to violence, and yet, as hereinafter shown, be on the defensive; just as an individual, who either saw or knew of a certainty that another was about to fall upon him, would be in defending himself by anticipating his foe in violence. War is

[1] Vattel, b. i. ch. 18.

generally divided into two, *offensive* and *defensive.* By the former is meant a war which State A initiates against State B. By the latter I mean a war which B is enforced into by A, or is in for its own defence. The first question proposed is this: can any war be in harmony with the holy canons[1]? What is not with them is against them. *Erasmus* condemns all wars.

Of a certainty the love of God and a war *offensive* are contradictions: day and night, heaven and hell, are not more so. Should it be objected, that the Old Testament contains instances of such wars began and carried on under the express command of the Almighty, my answer is, that *Christianity*, under which we live and move and have our being, neither was to be nor was established by force of arms, but by means the very contradictory to it. No Christian will refuse me this answer; and those who hold, as most of the commentators on the law of nations do, that *we* are under a

[1] See South's Sermon on War.

new system can refuse me this apology. Had the sword been, for the promulgation of the Gospel, put into the hands of the Apostles and others, to use it would have been their duty: I say their duty, fearless of the censure bestowed on *William of Ockham* for a like remark[1]. But it was not so ordained. Their armour was that of righteousness and peace. Now, suppose *Charlemagne* had from a love to God, to plant Christianity there (too often, alas! a pretext for the foulest passions), ravaged *Saxony* with fire and sword, and supposing it to be an *offensive* war, it cannot stand for a moment before the test of the former of these canons; and it is no less repugnant to the latter. This is decided by a simple inspection of the canons. But suppose it to be a *defensive* war; suppose for argument's sake, a successor of Mahomet to have entered the dominions of the Emperor for the purpose of establishing Mahometanism there; what then? Is there no armour against his

[1] McIntosh's *Dissertation on the Progress of Ethical Philosophy*, p. 41.

violence but prayers and tears[1]? Might then Charlemagne have gone to war with the invader? I have already pointed out the *inexorable necessity* that justifies a *re-offending*[2], and the Emperor's conduct must stand or fall by that. If the necessity for re-offending arose (as it would in the case supposed) out of such an invasion,—if the Emperor had exhausted all peaceable means of preserving his empire from injury, and a successful resort to arms was possible,—an appeal to arms, as the last resort, was not only allowable, but became, it would seem, a duty. Hence is it that the Mahometan's war being *offensive*, could not be justified. Hence, also, I conclude that of Charlemagne, being *defensive*, not inconsistent with either of the two holy canons. Let me not be misunderstood: I do not say that all *defensive* wars are just: I only say that a defensive war is the only kind of war that can (if any) be justified. When I speak of Mahomet and Charlemagne, I speak not of them as individuals, but as the moral

[1] See Cicero's Defence of Milo. [2] See p. 74.

persons of the states they govern,—the sovereign depositaries of the understanding and will, of the obligations and rights, of the people whom they represent.

But a nation may be unjustly attacked by a powerful enemy, and threatened with injury. Now, if another nation-friend can defend it without injury to itself, may that other interfere by force? *Vattel* says it may; and cites the case of *Sobieski*, King of Poland, advancing against the Turks, engaged in the siege of *Vienna*: "It may (says he) be his own case to stand in need of assistance; and consequently, he is acting for the safety of his nation in giving energy to the spirit and disposition to afford mutual aid." Burke, in his *Letters on a Regicide Peace*, refers to this well-known sentence, but practically repudiates it. If the war be *offensive*, I re-assert, it is wholly repugnant to the Divine Will, as expressed in these two canons; if *defensive*, it may, perhaps, according to circumstances, be justified. But to say that a nation may possibly stand in need of assistance, and

that, because of this possible or probable want, it is acting for its own safety in giving energy to the spirit and disposition to afford *mutual aid*, is a piece of mischievous sophistry unworthy of *Vattel;* and, seeing what it has encouraged and daily encourages in the world, it is infinitely more abominable than anything *Hobbes* ever penned. Self-preservation is here the pretext, not of a positive, but of a danger which may or may never arise. In short, there is no danger, much less that of an immediate kind, which justifies a re-offending. The danger must be great, clear, and imminent[1].

But this case may be supposed,—if A be about to strike B with a deadly weapon, may not C forcibly interfere, when he can do so without positive danger to himself? In the case proposed, as there is, *ex concessis*, no danger, he is obliged by the second canon to interfere. But the same canon also says, if there be any danger, he is bound to avoid it. Therefore in the latter

[1] Kent, pt. 1, sect. 2.

case no duty of interference arises; and if no duty, correlatively no right. Now, whether deadly weapons be in the hands of one or of more individuals, the law is the same. The same rule enjoins every peaceable effort to re-establish peace and good-will; but here, as I said before, the duty of interference ceases, and the right of self-preservation begins. I know that the law of England and of many other countries admits of interference to a limited extent—as husband in defence of his wife, child of his parent, and the like; but it is not, therefore, morally right. In the case proposed, was *Poland* directly or indirectly attacked by the Turks? An answer drawn from the true source of moral action—from the two sacred canons—will justify or condemn the conduct of *Sobieski.* It may be admitted, that he saved the House of Austria and all Germany, his own kingdom besides; but the end does not always justify the means; and unless he was acting from the beginning in defence of Poland against great, distinct, and

imminent danger, he was but the enemy of God and man. The interference of the Emperor of Russia in Hungary in 1849, of the French Republic in Rome, and that of Austria, Prussia, and Bavaria in the Electorate of Cassel, must stand or fall by the same test. Mind, I speak always of an interference not in any way influenced by positive agreement or the obligations of treaties, to which I will address myself presently.

Let us now take another view of it, and especially in the light of *arbitration*, *intervention*, *prevention*, and the like.

"The immediate cause of the Trojan war is generally allowed to have been the rape of Helen, the wife of Menelaus, by Paris, the son of Priam, the King of Troy; although, prior to that motive, an animosity had subsisted between the Greeks and Trojans for many generations. It is not otherwise probable that a quarrel which interested only Menelaus and his brother Agamemnon should have been readily espoused by all the princes of Greece. . . . .

The detail of the chief events of the war is to be found in Homer, with a copious embellishment of fiction. The city (Troy) was taken soon after, either by storm or surprise, and, being set on fire during the night, was burnt to the ground; not a vestige of its ruins existing at this day. The miserable Trojans perished within the flames, or by the sword of the Greeks, and their empire and name was extinguished for ever."[1] Now suppose this to be a national quarrel and to arise again under the Christian dispensation. By what means ought we to determine it? Certainly not by an appeal to arms, but by the laws of peace; infinitely more effectual, not to speak of ten thousand other advantages, in checking crime and protecting society from such unbridled licentiousness. The experiment, if I may be pardoned the phrase, has been tried. The Chronicle of Paros thus records the judgment of the court of Areopagus between Mars and Neptune, two princes of Thessaly.

[1] Tytler's *Universal History* (*Trojan War*).

"Hallirhotius, the son of Neptune, had violated Alcippe, the daughter of Mars, and her father put him to death in revenge for the injury. To avoid a war, which would have ensued between these princes on occasion of this quarrel, *their difference was submitted to the judgment of the Areopagus*, which decreed that the revenge of Mars was justified by the outrage which he had sustained. This celebrated tribunal had been instituted by Cecrops, and soon arose to such reputation, that strangers *and even the sovereigns of other countries sometimes submitted their most important differences to its decision.*"[1] Is there, then, no remedy for ills like these but the sword? "Seeing that there are two kinds of contention, one by reason and the other by violence, seeing also that one is the property of man and the other of brutes, we should have recourse to the former."[2]

Another case:—"Œdipus had two sons, Eteocles and Polynices, to whom jointly he bequeathed the sovereignty of Thebes.

[1] Tytler's *Univ. Hist.*, b. i. ch. 6. [2] Cic.

Instead of dividing the kingdom, they agreed to govern it year after year alternately. Eteocles at the expiration of his time refusing to resign, Polynices solicited the aid of *Adrastus,* King of Argos, who espoused his cause, engaged several of the princes of Greece to assist him, and marched against the Thebans with a powerful army. They retreated before the enemy, and betook themselves to their city, which Adrastus immediately took measures for assaulting. . . . Thebes, after a long siege, gave no hopes of surrender; both parties became tired of the war, and it was at length agreed to terminate it by a single combat between the rival brothers, Eteocles and Polynices: an issue for the quarrel of sovereign princes which the humane reader of history will often find reason to wish had been more frequently resorted to. The brothers fought under the walls of Thebes, and were both killed." The perfidy of Eteocles requires no condemnation, and the Greek poets who have made use of this story (Æschylus, Sophocles,

and Euripides) all agree in denying to Polynices the honours of burial, for having troubled the repose of his country by a war. But what shall we say of *Adrastus*, who espoused the cause of Polynices, and engaged other princes of Greece to march against the Thebans? Speak! France, and Russia, and Austria, and Bavaria; say—say what *you* think of Adrastus, and then shall you have judgment pronounced on the *Adrastuses* of modern Europe. The case of John Sobieski, King of Poland, hastening to the relief of Vienna, has been discussed. England and America seem at last to have come to their senses on this point of national morality. When France rose against the House of Bourbon in 1830, and in 1848, they wisely refrained from all interference; honour, peace, happiness, and prosperity, instead of the calamities of war, were the results of that policy. France herself, in the *last* Constitution (1848), art. 5, declares:—"*Elle respecte les nationalités étrangères*, comme elle entend faire respecter la sienne; n'entrepend aucune

guerre dans des vues de conquête, *et n'emploie jamais ses forces contre la liberté d'aucun peuple.*"

And the commentary upon this article by one of their ablest statesmen, M. Dupin, is this [1]:—

" *Les Nationalités Etrangères.*—Par conséquent, la République s'interdit toute innovation dans les affaires intérieures des autres états. Ils sont maîtres chez eux, comme nous prétendons l'être chez nous. C'est en ce sens que j'ai dit en 1830: Chacun chez soi, chacun son droit. Voyez Appendice, No. 3.

" *Faire respecter la sienne.*— C'est ce qu'a fait la France en 1792, lorsque, en réponse au manifeste de Pilnitz, elle s'est levée en masse pour la défense de son territoire et de sa liberté.

" *Vues de Conquête.*—On ne dit pas qu'une conquête ne puisse être le résultat d'une guerre, mais aucune guerre ne sera entreprise dans la vue de faire des conquêtes, constit. de 1794, tit. 6.

[1] *Constitution de la République Française*, 1849.

"*Contre la Liberté.*—Il ne faut entrer dans aucune alliance contre la liberté des peuples, non plus que dans aucune insurrection contre les gouvernements étrangers. A la différence des Romains, qui, chez chaque peuple, entretenaient les divisions et soutenaient les minorités factieuses ou les prétendants déchus, pour les opposer avec leur secours aux majorités nationales et les subjuguer. La politique des Etats-Unis en cette matière se trouve résumée dans ce passage du dernier message adressé au Congrès par le Président Polk, en Novembre, 1848:—' Notre pays est plus haut placé que jamais dans le respect du monde. Pour conserver cette position, il ne faut que maintenir la paix, et demeurer fidèle au grand principe fondamental de notre politique extérieure: la non-intervention dans les affaires domestiques des autres nations. Nous reconnaissons à tous les peuples le droit dont nous jouissons nous-mêmes de changer et de réformer à leur gré leurs institutions politiques. Par suite, nous ne regardons pas au delà des

gouvernements existants capables de maintenir leur autorité. Nous reconnaissons tous les gouvernements de fait, non seulement par un principe de saine politique, mais aussi par un respect sacre pour l'indépendance des nations.' Aussi tous les hommes honnêtes en France ont blâmé les expéditions anarchiques dirigées après Février contre la Savoie, contre la rive droite du Rhin, et contre la Belgique, où l'échauffourée de *risquous tout* a reçu un juste châtiment, et laissé son nom à ceux qui l'avaient tentée."

Scarce, however, was the ink dry that gave permanence to these noble sentiments, than a host of armed men were, by the command of the President of the Republic, marched up to the walls of Rome, to interfere between *Pio Nono* and his subjects. They bombarded, they stormed the *Eternal City*, and peace between the Pope and his subjects is now, and has been for nearly two years, in the pious keeping of French bayonets!

How the Russians defend their armed

entrance into Hungary, the Austrians and Prussians theirs into Hesse-Cassel, I know not. It is probable these may be justified on the ground of *self-defence.* France, as at present advised, I know not how to stand up for.

A word, in conclusion, to those who court the interference of others. A civil war arose in Greece respecting the oracle of Delphi. Philip of Macedon, a neighbouring prince, was invited by the Athenians to interfere: with an armed host he passed through *Thermopylæ*, poured down like a torrent on the Phocians, and presented himself at Delphos; here, through the spirit of the *Amphictyonic Council*, he became Arbiter of the affairs of Greece. The battle of *Cheronæa* soon followed, and the liberty of Greece fell, cloven down by the very arm brought in to defend it! Is it better to fall by the hand of a perfidious friend, than of an open enemy?

And there is an *interference not armed*, such as that of Philip of Macedon, in bribing Œschines and others to create con-

fusion for the purposes of interference and conquest; and such as that of Catherine of Russia in Poland, for the purpose of, and which ultimately ended in, the dismemberment of that kingdom—an act without its parallel in political depravity.

There is also an interference not armed, that is, by way of remonstrance, advice, and the like: when *self-preservation* is mediately or immediately involved, or at the request of a friendly power in need, or by a wanton officious meddling, which has not in any way *self-preservation* involved in it, nor even the importunities of a friendly power to justify it. The first is a duty: the last is an insult.

A nation, as already stated, may be the *first* to resort to violence, and yet be strictly in the *defensive.*

In the autumn of 1807 England sent an army and fleet to Copenhagen to demand the surrender of the Danish fleet until the war with Napoleon was at an end. At this time Denmark was a *neutral power.* The fear that the Danish fleet would fall into

the hands of the French, and so strengthen the power of the enemies of England, prompted this attack on Copenhagen. The demand of the fleet was made. The crown Prince indignantly refused, alleging Denmark's ability to maintain its neutrality. On refusal, our army landed, our fleet poured its broadside into the capital, the Danish flag struck, and their fleet surrendered. Was this conduct justifiable on the part of England? Did the *necessity*, already defined, here arise? I think not, and I think not for the reason commonly assigned—that our supremacy by sea had been before that fully established by the battle of *Trafalgar*. What was the consequence? Alexander, Emperor of Russia, ceased to act in concert with us for some years against the common foe; enmity and war, instead of love and peace, between England and Denmark was the immediate result; the commerce of both nations vitally injured; and, last of all, the kingdom of Denmark dismembered. Denmark was deprived of Norway, and

England got the barren rock of Heligoland. Whether the facts be tested by principle or balanced by consequences, the British flag, if the facts be so, was disgraced by a cause which even the love of fatherland cannot induce me to defend, much less to justify.

Another case:—In 1803 England declared war against the republics of France and Batavia, although no violence had been resorted to, nor any formal declaration of war made against this kingdom by either France or Holland; and yet England was justified, if ever an appeal to arms was so. After the Treaty of Amiens, peace had sat on Europe like down on the thistle's top, to be blown away at any moment by the breath of the First Consul. His occupation, by French troops, of Holland, Switzerland, &c., his conduct as regards Malta, and his gigantic preparations by sea and land for a descent upon England, or Ireland, or both, created that *inexorable necessity* which justifies an appeal to arms *in self-defence.* In fact, although England was the first in the field of violence, she

was not the first aggressor in the moral law. She was acting on the *defensive;* and all the horrors of that war are to be charged on France, whose conduct made it necessary for England to take the initiative in arms, *for her own preservation.*

There are passages in the works of the illustrious Edmund Burke *apparently* at variance with these sentiments, such as— "what in civil society is a ground of action, in publick society is a ground of war,"[1] and the like. But as Algernon Sidney, on his trial, well said, "The Holy Scriptures themselves, by selecting isolated passages, might be converted into libels upon the Most High; as, '*There is no God*' selected from the verse, 'The foolish man hath said in his heart there is no God:'" so the whole contents, his whole works, the whole volume of Burke's life shows that he did not think war a matter of experiment, or a coquette to be flirted with. He is throughout these celebrated letters writing of France, and the imminent dangers

[1] *Letters on a Regicide Peace.*

arising thence, especially to England. In short, it is clear that he regarded the French Revolution of 1792 as a declaration of war against all mankind. And now that we know what did take place, we stand amazed at his almost prophetic wisdom. The following passages will be conclusive as to his general meaning:—

"We are (says he) in a war of a *peculiar* nature. It is not with an ordinary community, which is hostile or friendly as passion, or as interest may veer about; not with a state which makes war through wantonness, and abandons it through lassitude. We are at war with a system, which, by its essence, is inimical to all other governments, and which makes peace or war as peace and war may best contribute to their subversion. It is with an *armed doctrine* that we are at war. It has by its essence a faction of opinion, and of interest, and of enthusiasm, in every country. To us it is a Colossus, which bestrides our channel. It has one foot on a foreign shore, the other upon the British soil. Thus ad-

vantaged, if it can exist at all, it must finally prevail." Again, he says:—"The blood of man should never be shed, but to redeem the blood of man. It is well shed for our family, for our friends, for our God, for our country, for our kind. The rest is vanity; the rest is crime . . . . . ." "If the war made to prevent the union of the two crowns upon one head was a just war, this, which is made to prevent the tearing all crowns from all heads which ought to wear them, and with the crowns to smite off the sacred heads themselves, this is a just war.

"If a war to prevent Louis XIV. from imposing his religion was just, a war to prevent the murderers of Louis XVI. from imposing their irreligion upon us is just: a war to prevent the operations of a system, which makes life without dignity and death without hope, is a just war.

"If to preserve political independence and civil freedom to nations was a just ground of war, a war to preserve national independence, property, liberty, life, honour,

from certain universal havoc, is a war just, necessary, manly, pious; and we are bound to persevere in it, by every principle divine and human, as long as *the system which menaces them all, and all equally*, has an existence in the world.

"Various persons may concur in the same measure on various grounds. They may be various, without being contrary to, or exclusive of, each other. I thought the insolent, unprovoked aggression of the regicide, upon our ally of Holland, a good ground of war. I think his manifest attempt to overturn the balance of Europe a good ground of war. As a good ground of war, I consider the declaration of war on his Majesty and his kingdom. But though I have taken all these to my aid I consider them as nothing more than as a sort of evidence to indicate the treasonable mind within. Long before their acts of aggression, and their declaration of war, the faction in France had assumed a form, had adopted a body of principles and maxims, and had regularly and systematically acted

on them, by which *she virtually had put herself in a posture which was in itself a declaration of war against all mankind.*"[1]

Were I to leave the question of war here, I should leave it incomplete, and do great injustice to the rule or standard I would bring it to.

The end of war is self-preservation. Aristotle, in his *Treatise on Government*, says, "the end of war is peace."[2] If it be used so as to exclude *offensive* wars,—if it be used so as to involve the idea of self-preservation,—I have no great reason to object to it. Self-preservation or peace being the end of war, no labour or pains should be spared by a nation to prevent the dire necessity of an appeal to arms, nor to stay the plague where it is raging, by all means consistent with its own safety. Love thyself, but love thy neighbour as thyself, is the language of truth addressed to all nations, and, above all, on such momentous occasions.

[1] *First Letter on a Regicide Peace.*

[2] See B. 6 and 7, ch. 2. 14.

I have already alluded to the mediation, the prayers, the remonstrance, and the flight of David, before he resorted to the sword of Goliath, and the host of armed men against Saul. And I rejoice to find in the history of nations that most of them assume the appearance of these virtues, even when they have them not.

The Romans have left us, in this respect, a noble example of justice, moderation, and prudence. Before they had extended their arms so far as to weaken their power—before the sun of the Eternal City had culminated—their law of nations, or *Fecial Law*, required that the *pater patratus*, or the Chief Priest of the College of Feciales, should go and demand satisfaction of the supposed offender. If within thirty-three days a satisfactory answer was not returned, the Herald returned to Rome. The Senate was consulted; and, if war was resolved upon, the Herald was sent back to the frontier, where he declared war by throwing a spear into the enemy's territory. And the form of it was gone through at

home, long after their extended empire made the former ceremony inconvenient[1]. This *denunciation of war* was, in effect, all other means having failed, an appeal to the fears of the offender, affording him once more a *locus pœnitentiæ* before taking up arms: for it is still possible that the action that provokes or threatens with mischief is accidental rather than designed.

What is the conduct of the Christian world in this respect? It stands, I am sorry to say, in humiliating contrast: and with England not the least prominent figure on the shield of war.

Nations often publish and *declare* war in their own dominions, without any *denunciation* of it to their enemy. This they do by an instrument, called a *Manifesto*—a writing containing the declaration of war, with the reason of it, real or pretended. From the publication of this the nations are at war. Subjects and neutral states are, as it were, to take judicial notice of it.

[1] Livy, b. 1, ch. 3.

Grotius[1], Puffendorf[2], and Emerigon[3] say, that a *denunciation of war* to the enemy is absolutely necessary. Vattel[4], and even Bynkershöek[5], (who hold it not necessary), advise it. And those moralists, whose maxim is—what is expedient is right, of course recommend it. When A joins B against C in a *defensive* war, Vattel says, a previous declaration of war against A is indispensably necessary[6]. One of the greatest judges that ever adorned the judicial seat in England decided that a *denunciation* of war was unnecessary[7]. So that, by the Common Law of England (the law of nations being a part of it[8]), a denunciation of war seems to be unnecessary, and the law of America would seem to follow it.

[1] Grotius, b. 1, ch. 3, 4.

[2] Puff., b. 8, ch. 6. 9.

[3] Emerigon's *Traité des Ass.*, vol. i. 563.

[4] Vattel, b. 3, ch. 4. 51.

[5] Byn.

[6] B. 3, ch. 6.

[7] Sir W. Scott (afterwards Lord Stowell), Dods. *Adm. Rep.* 2—7.

[8] Kent's *Comm.*, 1 n.

What is the truth? With the two sacred canons before us, there is no great difficulty. Before an appeal to violence, all possible means of avoiding it, consistent with self-preservation, must be employed. If a denunciation to the enemy be prevented, might not the Roman system be adopted? That left undone, all is not done that might be done; and when *Emerigon* denies the name of war to the hostilities of England in 1755; and others, to the bloody combats with the French after 1801 and 1807, I for one cannot blame them.

But is the common law of England unjust? I distinguish between the decision of a single judge sitting alone and the whole common law of England. I distinguish between a thing dwarfed by technicalities and one of the wholesome rules of the common law of England, expanded and enlarged to the bounds of right reason. As the foundation of our judicial system is *stare decisis*, it is probable that a Court of Appeal would affirm the judgment in this case; but, I will venture to predict (if affirmed at all), not for

the reason given by Sir W. Scott, namely, because "it is so laid down by the best writers on the law of nations," but because of the language of the treaty which *estopped* the parties from saying that war did not exist at the time. Besides, I cannot help thinking that the just indignation of the nation against the false and hollow neutrality of Denmark had reached the bench. It is idle to say that our judges are not men, and that the hopes and fears of their fellow-citizens do not at times force their way to the heart through the thickest folds of their ermine. They cease to be judges, when they cease to be men.

Besides a denunciation of war, as a prevention of open hostilities, *reprisals* may be resorted to. The word *reprisals* is derived from the French word *reprendre*, and means a retaking; or, in a secondary sense, the taking of one thing in the place of another taken away, as ship for ship, and the like.

Between general reprisals and open war,

as *De Witt* remarks[1], there does not appear to be any difference. I therefore speak of reprisals *not* general. I will endeavour to illustrate it, premising only for the present that, as between nation and nation, the private property of the members is considered the property of the nation at large.

I will proceed, as before, by illustration: suppose *Greece* refuse to pay a debt due to England or to one of her subjects, to repair an injury, or to give adequate satisfaction for one; the latter seizes upon something belonging to the former: and *England* may do this, not only for national but also for individual acts, when the acts of individual subjects are adopted by the Sovereign Power. The nation does it, or the Queen, on application, grants permission to any of her injured *subjects* to make reprisals. This permission is called *letters of marque.* The things seized are, as it were, in pledge. But they may, on re-

[1] Vattel, b. ii. ch. 18.

fusal of satisfaction, be confiscated. No property seems exempt from reprisals but *public securities.* The persons, also, of individual members of a state may be taken by way of reprisal. The victory of *Waterloo* released thousands of British subjects from French prison.

"It is certain (says the grand pensioner *De Witt*) that reprisals ought not to be granted except in case of an open denial of justice. Finally, it is also evident that, even in case of a denial of justice, he cannot empower his subjects to make reprisals until he has repeatedly demanded justice for them, and added that, in the event of a refusal, he will be obliged to grant them letters of marque and reprisal." As the instance given would seem to have an aspect rather to *offensive* than to *defensive* hostilities, let me guard myself by saying that, as reprisals differ only in *degree* and not in *kind* from war, they stand or fall by the same moral rules. Are they defensive? and has that

inexorable necessity arisen which obliges us so to act in self-defence?

But this question has repeatedly, of late years, been put:—Is *Greece* or *America* to deny with impunity a just debt due to England, or to one of her subjects? I will answer it by another:—Is the safety of England endangered by it[1]? I vouch all thinking men to this assertion, that, whether it be the case of *Greece* or *Pennsylvania*, the pen of a ready writer, like that of the late *Sydney Smith*, is infinitely more powerful, as a corrective, not to speak of its peaceful properties, than all the guns our dockyards on the Medway could supply. Philip of Macedon knew the moral world well when he said that he was more afraid of *Demosthenes* than of all the fleets and armies of the Athenians.

Besides a declaration or denunciation of war, writers on the law of nations speak of two other kinds of modified warfare, or hostilities, short of open war, namely, *re-*

[1] De Witt's Correspondence.

taliation and *retortion.* Between the two essentially there is little distinction, and still less to boot; for, as *Vattel* well observes, "the idea is wholly derived from the obscure and false notion which represents evil as essentially and in its own nature worthy of punishment."[1] When we make another suffer just as much evil as he has inflicted upon us, we are said to act by this law of Rhadamanthus. For example, if the Emperor of Morocco should slit the nose of an English envoy, and England slit the nose of the Emperor's envoy, this would be by the *lex talionis.* The murdering of prisoners, and the like, is of the same family. Vattel describes *retortion* thus: "When a sovereign is not satisfied with the manner in which his subjects are treated by the laws and customs of another nation, he is at liberty to declare that he will treat the subjects of that nation in the same manner as his are treated. This is what is called *retortion.* There is nothing in this but what

[1] Vattel, b. ii. ch. 18.

is conformable to justice and sound policy. No one can complain on receiving the same treatment which he gives to others. Thus the King of Poland, Elector of Saxony, enforces the law of escheatage only against the subjects of those princes who make the Saxons liable to it. This retortion may also take place with respect to certain regulations of which we have no right to complain, and which we are even obliged to approve, though it is proper to guard against their effect, by imitating them. Such are the orders relating to the importation or exportation of certain commodities or merchandise; on the other hand, circumstances frequently forbid us to have recourse to retortion. In this respect each nation may act according to the dictates of her own prudence." What says the Word of that glorious Dispensation under which we live, and move, and have our being:—

"Ye have heard that it hath been said, An eye for an eye, and a tooth for a tooth: But I say unto you, That ye resist not evil: but whosoever shall

smite thee on thy right cheek, turn to him the other also."[1]

Now bring what Vattel says to the test of the holy canon—"Love thy neighbour as thyself," and his confusion and fallacies will be at once evident. Instead of being *conformable to justice and sound policy*, they, as here avowed, proceed from an affection the contradictory of benevolence: and when that is at the bottom, justice and sound policy cannot form the superstructure. What is morally wrong cannot be politically right. Good cannot come out of evil. In some countries import and export duties are ignorantly or confidently justified by this base-born Vattelian theory; but they never have, and never will, and never can consist with sound policy.

So far, then, *before* actual hostilities; and, the principle being the same, little more need be added about a nation's conduct *during* a war.

Self-preservation being the only just cause of entering into it, self-preservation

[1] St. Matt. v. 38.

is the only just reason for continuing in it. That object being fully attained, the war should cease. Every thought, word, and deed, should be measured by it. No means are to be resorted to but what are necessary for securing the desired object. These words should be emblazoned on every banner, and entered in every log and orderly book of the contending nations:—

"Love thy neighbour as thyself."

The following rules, generally agreed on by commentators on the law of nations, do not seem far amiss:—When a nation's safety requires it, she may prevent a neutral supplying an enemy with warlike stores, and even with provisions. She may seize *contraband* goods, even on board a neutral vessel, and confiscate them; a right of search being necessarily incident thereto. The income of immoveable property may be sequestered, to prevent its being remitted to the enemy. A subject-debtor to the enemy may be

prevented paying it, while the war continues; or, if payable in the time of war, debts of this kind may be confiscated: and a nation has the same right over any sums of money due by neutral nations to the enemy as they have over other property. As before observed, the only property deemed *sacred* is money lent to the public *on public securities.*

The subjects of the contending nations are *in statu hostili* all over the world while the war continues; and their property falls within its rules wherever it is to be found; for it is not the place where it is, but the character of the owner, that determines its nature. This right to seize on the person or property of an enemy may, however, be qualified by the rights of another state where they may be.

The same rules, also, declare that the usual channels of commerce between a neutral nation and the enemy are not to be stopped.

Again, it is admitted, what one nation may do against another, it may also do

against the associates of the enemy. For all aiders and abettors, to use the language of our law, are principals in the first degree, and equally endanger the security of the other.

It may be, however, that assistance is rendered to an enemy by virtue of some treaty, signed in time of profound peace. What then? There is the alternative of violating a deliberate engagement, founded perhaps, on a good consideration, and open hostilities. Much has been written on this particular point; but for want of a plain intelligible rule of moral conduct to go by, all is confusion worse confounded; and to most of what is written I refuse my assent. Take the two sacred canons in your hands and judge for yourself, apart from these scholastic subtleties; you will at once see that, unless your own safety be immediately involved in the issue, your duty is not to interfere; and that a treaty, which in express words calls upon you to assist another *per fas aut nefas*, is null and void. But even supposing the contract obligatory

inter se, yet being, by force of circumstances, brought into conflict with an implied obligation of paramount importance, it is, *pro tanto*, suspended. The one is, if I may be allowed so to speak, the all-obligatory covenant between God and man, which endures no change nor diminution; the other is an agreement between fallible beings, respecting things of this world. Let me here ask, What, in the presence of the holy canons, becomes of the use of poisoned weapons in war[1]—the poisoning of springs, the procuring an enemy's death by poison, assassination, and the like?

[1] De Wolff; see Vattel, b. iii. ch. 8.

BOOK IV.

CHAPTER I.

PROPERTY.

HAVING applied the two holy canons to the offices of humanity, intervention, neutrality, war, reprisals, retaliation, and the like; I will now proceed to apply them to dominion or property: the institution or existence of which, be pleased to remember, they rather presuppose than account for. In other words, it is to the *usufruct* of property, and to that alone, that I would here apply them.

Should one ask me, whence the right of property came? I would answer, Read your Bible. Should one ask me, how it assumed its present form or tenure? I would answer, Read Paley's *Moral and*

Political Philosophy: for I do honestly believe his to be the best account. It is not, perhaps, so ingenious as the suggestions of *Locke*, but it has this advantage—it is more satisfactory. I would make one remark more, a remark which seems to have escaped most writers;—namely, that the right of property is expressly or impliedly sanctioned in almost every verse of the New Testament. I mean both individual and national property.

As there are some things called *res communes*, or things common, as the sea and the like, I must go back for a moment to the beginning of all things, as related by the Jewish historian. Soon after the creation of the world, the first man and the first woman had (as already shown[1]) the dominion of all created things given to them for their use. But the question arises, what is the nature of that dominion or right? Does it mean an equal right to the whole, or an equal right to the whole,

[1] Page 44.

subject to some derogation in its enjoyment? The words of the primary grant need no confirmation from the New Testament, nor any interpretation or aid from the light of nature, to show the latter to be their true meaning. Man, by this primary gift of Heaven, has a right of property in all created things: but not necessarily the immediate use of anything; for that may, consistently, be in one or more of the great family of man, exclusive of the rest.

In the consideration of this all-important question of international morality, I omit, as much as I can, all reference to that universal dominion which the Popes of Rome have often assumed to exercise over the earth. I do not allude to it more particularly because the very idea is at variance with the primary grant of property, is repudiated not only by nations *en masse*, but by the best informed of *Pio Nono's* own spiritual subjects. The bull of Pope Alexander VI., by which he professed to give to Ferdinand and Isabella, (of Castile and Arragon) the New World, discovered

by Columbus; that of Pope Nicholas V., by which Alphonso of Portugal was to have the sovereignty of Guinea; the letter of Pope Boniface VIII. to Philip the Fair of France, and his famous bull *unam sanctam*, are almost forgotten, except for their arrogance and folly.

Dominion has for its subject-matter land, sea, and other elements.

Firstly, of land: the qualified right to it is acquired by taking possession of it when there is no owner, or by taking it from another with or against his consent, that is, by gift, purchase, or, in some cases, by force. It is only the first and last modes of acquiring property that fall strictly within the range of the present subject; for it is very—very seldom that a nation acquires any property by gift or purchase; whereas England's colonial system, and most possessions acquired in or through war, are examples of the others. Now, to know how one individual ought to conduct himself towards another: and how one nation ought to demean itself towards another in

respect of property, we have only to do as we have done before, when obliged to have recourse to first principles, namely, to read over the canon—

"Love thy neighbour as thyself."

As Truth fears no inquiry—on the contrary, as it shines more, the more it is seen—I will proceed to dissect and illustrate the canon. A few years ago a small island rose, like an exhalation, from out the high seas, named *Graham's Island;* a British subject saw it, landed, planted upon it the union-jack, and in the name of Great Britain took possession of it. Was this right or wrong? It was right by this canon, and by force of the primary gift of property; for he did no man an injury in taking possession of it, inasmuch as it had no owner or possessor at the time. It was, so to speak, fresh from the mould of creation: and therefore belonged to the first occupant. But why take possession of it for the nation, and not for himself, as an individual? No subject can, under such circumstances, be allowed to acquire, *sui juris*,

public or *domain* property (*res universitatis*). He can only do so as a member of the body to which he belongs, and in the name and for that body. The reason is obvious, for if one subject were allowed to do so, all must be allowed to do so, and *empire* would cease to be. The holy canon, without the light of nature to aid us in the matter, necessarily implies it.

The case supposed, however, seldom occurs. It generally happens that the *locus in quo* is inhabited. Our Indian, Australian, and Canadian possessions, Algeria with the French, are a few of many instances. Was the restless foot of English adventure here justified? Vattel's answer would be, that, if a *sufficiency of land was left for the natives*, or, in case of *pressing necessity*, it would be justifiable; because (says he[1]) the savages of North America had no right to appropriate all that vast continent to themselves! As this is the great commentator on the law of nature and nations, who asserts that "he who is in want

[1] B. i ch. 18.

of anything is not obliged to starve because all property is vested in others; when, therefore, a nation is in absolute want of provisions, she may compel her neighbours, who have more than they want for themselves, to supply her with a share of them at a fair price; she may even take it by force, if they will not sell it. Extreme necessity revives the primitive communion, the abolition of which ought to deprive no persons of the necessaries of life!" As it is he who also justifies the rape of the Sabine women! I need only stop to exclaim, what glorious news for the Tarquins and Jack Sheppards of the world. I say Tarquin and Jack Sheppard, for it is just the defence both these scoundrels would have made at the bar of a criminal court in this country. Necessity is but a hungry plea for sin! Fortunately, notwithstanding the pains thus taken to ingraft it into the state system, the practice of the world repudiates such a foul and detestable doctrine. It is, I am happy to say, a general rule to obtain the consent of the inhabi-

tants of an already-peopled country before taking possession. It may be, and has been, in some cases, the consent of a man with the highwayman's pistol at his head; but even in this do we find cogent evidence of what the substance should be, and what the actors themselves think right. And is not this what the canon enjoins? You are to do to others, in respect of this land, as you would others should do to you. You are not to take it from him, any more than you are to strip him of his raiment, or the necessaries of life. It is a direct violation of the canon to do so. Vattel would say that they have more than they want! If, indeed, ploughing and sowing and planting corn-fields or vineyards be the measure, it may be so. Had the *New Zealanders*, regarding their mode of life, &c., more than they wanted? Might not England, Russia, France, Switzerland, and America be taken possession of on like grounds by the Chinese or the Belgians? Looking at their cultivated fields and vast population in comparison,

they might hold this language. "The savages of North America (says Vattel) had no right to appropriate all that vast continent to themselves!" If the Bible be false, they may, perhaps, have had no right! If it be true (and it is as true as that there is a God in Heaven), their right was as good as that of any nation on earth to the ground they claim. They have the same title-deeds; they hold by the same tenure; and they ought only to lose it in the same way—by consent. Nay, even the same author himself lays it down as a leading maxim of state policy, that one nation is the sole judge of its own wants; that one nation is not justified in saying to another, You have more than you want, and we must have it. I repeat, in the case last supposed, unless our property was acquired with the consent of the prior occupants, we have no better title to it than the thief has to his booty, or the highwayman to the watch he forced from his fellow-man with a pistol to his head. If we take possession with the consent of

the prior occupant, be it of private or public property, be it the act of an individual or of a nation, the canon is not violated. That many individuals and many nations do hold property acquired by means contradictory to this great moral rule is no argument against its truth, or its application to the concerns of life. It is still the rule of life, and so long as it remains, which will be for ever, no such claims as these can strengthen into right by prescription. Lastly, it has been boldly asserted by some Members of the House of Commons that (in dealings with savage tribes, who know not any moral rules, indeed, who, as the Kaffirs in South Africa, glory most in the expertness of thefts, and the like) Christians may disregard all moral sanctions. No doubt they sit light upon some professors of our faith; but to try the responsibility of one party by the delinquencies of another is neither a rule of law nor a precept of morality. Extirpation is the cry of a savage thirsting for human blood.

Next, of property acquired by taking it from a prior occupant against his will. What we get in war falls, for the most part, under this description; a nation's duty with respect to it is easy and simple. The end of war is self-preservation: or, if you will, peace. A nation, therefore, is justified in seizing the property of another during war, be it a territory, island, fortress, and the like: whenever such an act of seizure is absolutely necessary for the end desired. But it is only a seizure *quousque*, a seizure with a right of retainer *until* all danger is gone, or peace restored: and, when that happens, restoration, as of right, ought to follow. I do not mean to say that a nation may not wholly refuse to give it up. I think a nation may be, under certain circumstances, justified in withholding such property altogether, even in confiscating it, in order to indemnify itself against the losses and injuries inflicted by the aggressor. On the return of peace, however, this is always matter of arrangement; and the infirmity of

title is repaired by some such process as that involved in the civil law maxim—*omnis ratihabitio retrotrahitur et mandato æquiparatur.*

And as a nation may acquire property, so it may alienate it. It often happens that a town or province is, from necessity, ceded to a neighbour, or to a more powerful enemy. This cession is a *voluntary* abandonment of the occupation; and being, as it were, derelict property, the occupation confers a good title. However, a province or town thus abandoned or dismembered is not obliged to receive the new master whom the state attempts to set over it. Being separated from the society of which it was a member, it resumes all its original rights; and if it be able to defend itself against the prince who would, against its will, subject it to his authority, it may lawfully resist him. The original institution of property, and the usufruct of it, as controlled by the holy canons, justify all this.

Having discussed a nation's right and

mode of acquiring and alienating property in *land:* I proceed to man's real and assumed dominion over seas, lakes, rivers, and the like.

With regard to the dominion of the *seas:* few subjects have called into action more learned discussions. Grotius's *Mare liberum*, Selden's *Mare clausum*, and Bynkershöek's *Quæstiones publicis juris*, are, perhaps, the most conspicuous. May one nation, in exclusion of the rest, navigate, fish, and the like in part or whole of a given sea: be it in the Black Sea, the Dardanelles, the Gulf of Venice, or the English Channel? I would first of all observe (a remark I have not met with elsewhere), that in the primary gift of dominion to man, the sea, as a subject-matter of property, is not specifically named. The *fish of the sea* are, but not the sea itself. The same remark may be made of the grant as renewed to Noah and his sons after the deluge. Hence I infer, that by the Divine will the sea was not to be subject to the dominion of man in

the same sense in which the fish of the sea were. Looking at the Scriptures, where this great fact is recorded, and calling in aid the whole analogy of nature, I have no doubt that it was intended to be for ever common. This, indeed, is now an axiom in the law of nations: deduced, however, I should observe, from different premises from those given here. A nation, however, may abridge or wholly renounce this right in favour of another: that is, by express treaty or by tacit consent.

Nor is it inconsistent with this common right for each nation to have a part of the sea within a certain distance of the coast for self-protection. What distance a nation may extend its rights over the sea by which it is surrounded has been much discussed. *Bodinus* claims thirty leagues from the coast[1]. "Between nation and nation (says Vattel) all that can reasonably be said is, that in general the dominion of the state over the neighbouring sea extends as far as her safety renders it necessary."

[1] Rep., b. i. ch. x.

This is the rule: and has for its basis (though not so expressed) the words of the canon *Love thy neighbour as thyself.* It allows of the fullest freedom of navigation, fishing, and the like, consistent with self-preservation. *At present the whole space of the sea within cannon-shot* (i.e. *within three leagues*) *of the coast is considered as making a part of the territory:* as being sufficient for the purposes of self-defence. Hence it is that pearl, herring, mackerel, oyster fisheries, and the like, within the distance, as part of the adjacent territory, may become the property of one nation in exclusion of others. But suppose such things have been left in their primary freedom, and others have been permitted to use them. In such a case, perhaps, the primary right cannot be resumed as against them; for, although such right can neither be gained by prescription nor lost by non-user, the permission to fish, &c., or rather uninterrupted acts of fishing, &c., would be, as between them, cogent evidence of a treaty or agreement to use in common,

what otherwise might have been claimed as the property of one of them.

If a sea is entirely inclosed by the territories of a nation, and has no other communication than by a channel of which that nation may take possession, such a sea is no less capable of being occupied and becoming property than the land; to use the language of our law, it is land covered with water. The *Mediterranean*, during the Roman Empire, was so circumstanced and so treated. I know of no instance of this in modern times. The Black Sea and the Dardanelles approach the nearest to it: but the approximation is more seeming than real.

Ports, harbours, roads, bays, and straits, are for like reasons the exclusive property of the nation which they adjoin. "I speak (adds Vattel) of bays and straits of small extent, and not of those great tracts of sea to which sometimes these names are given, as *Hudson's Bay* and the *Straits of Magellan*, over which the empire cannot extend, and still less a right of

property. A bay, whose entrance can be defended, may be possessed and rendered subject to the laws of the sovereign; and it is of importance that it should be so, since the country might be much more easily insulted in such a place, than on a coast that lies exposed to the winds and the impetuosity of the waves. . . . Be it remarked, with regard to straits, that *when they serve for a communication between two seas*, the navigation of which is common to all or several nations, the nation which possesses the strait cannot refuse the others a passage through it, *provided that passage be innocent, and attended with no danger to herself.* By refusing it without just reasons, she would deprive those nations of an advantage granted to them by nature; and, indeed, the right to such a passage is a remnant of the primitive liberty enjoyed by all mankind. Nothing but the care of his *own safety* can authorize the owner of the strait to make use of certain precautions, and to require certain formalities, commonly established by the custom of

nations. He has a right to levy a moderate tax on the vessels that pass, partly on account of the inconvenience they give him by obliging him to be on his guard, partly as a return for the safety he procures them by protecting them from their enemies, by keeping pirates at a distance, and by defraying the expense attendant on the support of light-houses, sea marks, and other things necessary to the safety of mariners. Thus the King of Denmark requires a custom at the straits of the Sound. Such right ought to be founded on the same reasons, and subject to the same rules, as the tolls established on land or on a river.

"*Of rivers and lakes*:—I speak not here of rivers within the ambit of a country, for these of course belong to the country as part and parcel of it. I speak of rivers such as the Rhine, the Danube, the Scheldt, the St. Lawrence, and the like, which divide one nation from another, the free navigation of which often causes violent disputes."

The general rules, which fairly enough consist with the two sacred canons, are thus stated by Vattel:—

"1. When a nation takes possession of a country bounded by a river, she is considered as appropriating to herself the river also; for the utility of a river is too great to admit a supposition that the nation did not intend to reserve it to herself. Consequently, the nation that first established her dominion on one of the banks of the river is considered as being the first possessor of all that part of the river which bounds her territory. When there is question of a very broad river, this presumption admits not of a doubt, so far at least as relates to a part of the river's breadth; and the strength of the presumption increases or diminishes in an inverse ratio with the breadth of the river; for the narrower the river is, the more does the safety and convenience of its use require that it should be subject entirely to the empire and property of that nation.

"2. If that nation has made any use of

the river, as for navigation or fishing, it is presumed with the greater certainty that she has resolved to appropriate the river to her own use.

" 3. If of two nations inhabiting the opposite banks of the river, neither party can prove that they themselves, or those whose rights they inherit, were the first settlers in those tracts, it is to be supposed that both nations came there at the same time, since neither of them can give any reason for claiming the preference; and in this case the dominion of each will extend to the middle of the river.

" 4. A long and undisputed possession establishes the right of nations; otherwise there could be no peace, no stability between them; and notorious facts must be admitted to prove the possession. Thus, when, from time immemorial, a nation has, without contradiction, exercised the sovereignty upon a river which forms her boundary, nobody can dispute with that nation the supreme dominion over the river in question.

" Finally, if treaties determine anything on this question, they must be observed. To decide it by accurate and express stipulation is the safest mode; and such is, in fact, the method taken by most powers at present."

CHAPTER II.

NATIONAL INTERCOURSE.

HAVING applied the canons to the rights of humanity, war, national property, &c., I now proceed to the *personal intercourse* of the subjects of different nations, its character, rights, and duties; and, though last, not least, to *commerce*, and the like: subjects at all times of vital importance, but pre-eminently so now, especially to England: invited as she has the whole world to her shores to contend for the prizes of industry.

I need only remind you here of the second canon—

"Love thy neighbour as thyself."

I do not repeat the other, because I presume you do not require it: and because, with some, a too frequent repetition of it might weaken its force and beauty.

Mankind were, in the beginning, as already observed, free to roam on earth where'er they pleased. Land and sea were their common inheritance: and that primary right of freedom continues, where there exists no right of property to interfere with it. Over land and sea, therefore, over every spot derelict or unappropriated, man may go when and as he pleases. He does so as one of its lords and proprietors, in exercise of a right vested in him, as Man, by the Creator and Preserver of all things. Man's title deeds are registered in heaven. But this general ownership, as before observed, may be consistently restricted in its enjoyment by a particular ownership in another; and, as a consequence, the primary easement may be restricted in like manner, that is, by the will of one or more who have acquired rights in derogation of the general primary right of property. Hence passports, alien acts, custom-house regulations, and the like, which are but formal public declarations of leave to enter, or public ordinances of the terms on which

the members of one State may enter or reside within the dominions of another. As with individuals, so with nations; each is sovereign arbiter of the conditions of intercourse. Even should a total exclusion be the rule, as with the Chinese, the rest of the world has no right to complain. International intercourse, then, takes place either by express or implied consent. Being so, the inquiry arises—what are the rights and duties of the subjects of one State being within the dominions of another? I will consider the matter in the following order:—

1. Diplomatists, or persons there for national purposes.

2. Persons there for private purposes—education, trade, pleasure, and so forth.

Firstly, of Ambassadors.—According to one of the order—Sir Henry Wootten—they are persons sent abroad to tell lies for the good of their country. What they are sent for is one thing; what they ought to be sent for is another. They ought, in their mission, to fulfil this description—

public ministers sent by one sovereign-power to another to promote national intercourse. As it would be impossible for subjects of one sovereign-power, individually or collectively, to treat with those of another: and because the sovereign-power itself, in treating directly with sovereign-power, would have to do so under difficulties well nigh as great, *National Agency* was, if not a necessary, a direct consequence. This is diplomacy. It has existed, under different names, in all ages, and in every clime, and under every phasis of civilization and barbarity. Athens and Rome had their national agents. In China they are, as well as amongst the savage tribes of New Zealand and North America. The Spaniards found them in Mexico. In Europe they are commonly known as *ordinary* or *extraordinary*, according to the nature of their mission. If sent for all diplomatic purposes, they are ordinary; if not for general but for specific purposes, they are extraordinary. A diplomatist's character is made known

to the sovereign-power by *credentials*, given him for the sovereign-power to whom he is sent. They are, as it were, his general letters of attorney, his *Mandate Patent*[1]. He has also a *secret mandate* from home, that is, secret instructions what to do. At Athens the commission was openly read to the people from the pulpit of the public orators. At Rome ambassadors were led into the senate, and there they delivered their commissions to the Fathers—a practice worthy of all commendation. May the time come when in every senate in the world the credentials of ambassadors may be openly read! I have described this mission as a mere national agency. This was originally its character, but from marriage ceremonies and the like (as it is said) a custom sprung up (about the time of Louis XI. of France, according to *Vattel*) of investing these public agents with the power of representing their principals, not only in their affairs, but in their very persons and dignity. Agency thus

[1] Vattel, b. iv. ch. 6.

became enlarged to its utmost limits, and was called by way of eminence *the representative character.*

We shall presently see, more particularly, how the subjects of one State enter into, reside in, &c., the dominions of another; but at present, of such as are invested with a national or public character. Every sovereign-power at this day sends and receives ambassadors: to contest it, indeed, is regarded as no less than a denial of the sovereign dignity. Certain rights and immunities have in all ages been conceded to persons of a public character. For instance, an ambassador's person is sacred and inviolable. His house is a sanctuary to himself and to his household. He is deemed independent of the jurisdiction and authority of the State wherein he resides. He is allowed the free exercise of his religion, in his own house, for himself and his retainers. He is considered exempt from all personal impositions, duties, and, in general, from all such taxes as a subject of the State is obliged to pay.

Custom-House duties, or duties on things imported and exported, are, in general, allowed; but this exemption is not universal. In other words, he, his retinue, and *personal* property, are supposed not to be within the jurisdiction of the country where he is in a public capacity. It should be observed, however, that this fiction of the law of nations, apparently a necessary concomitant of the system, extends not to their landed estates or *immoveable* property, except his house, nor to property not incident to his representative character, as that of a private merchant and the like. It follows, that the appeal for redress in civil or criminal matters is not to the tribunals, but to the sovereign-power, who demands justice of the other sovereign-power; and in case of refusal, or the like, orders the offender to quit the dominions. This inviolability and independence also, in practice, extends to every individual of his retinue. But as an ambassador may waive it in his own case, he may waive it in theirs, as it is his privilege and not theirs.

Couriers, carriages, letters, dispatches, &c., are equally sacred. But, supposing such a one should become a public enemy by taking up arms or the like, is his representative character to shield him from the sword of justice? No; he forfeits the privileges annexed to his character, and may be treated as an enemy. This will be better understood hereafter, when I come to write of persons in private life. We hear sometimes, in our senate too, the grave discussion how an ambassador is to demean himself? According to Sir H. Wootten's views, there would necessarily be a difficulty, but with the holy canons as guides there could be none. He must remember that he is a stranger in the land; that he is there by leave. Independently of these considerations of strict right, he should not forget that he is the representative of the nation that has sent him; and that the object of his mission is not to intrigue, but to act the part of an honest man: to do all he can to facilitate the intercourse, to promote, by

all that the holy canons enjoin, the peace, happiness, and prosperity of the world. These rules are, perhaps, too plain and simple for a *Wootten* or a *Bulwer;* but simplicity is at once the characteristic and the evidence and the test of all great truths: and the good sense of the world will not be affected by the sayings of the one or by the doings of the other.

I have hitherto written of *ambassadors.* The rest, *envoys* (ordinary and extraordinary), *residents,* and *ministers,* are not the representatives of the person and dignity of their State; they are mere state-agents (as originally), deriving their rank from their credentials, or it may be from custom. Ambassadors are considered of the first, envoys of the second, residents of the third, and ministers of the fourth degree. Minister-plenipotentiaries are in the present system placed immediately after the ambassadors, or on a level with the envoy-extraordinary. In short, as I said before, there are substantially only two classes of diplomatists, those who are invested with

the *representative character* (ambassadors), and those who are not invested with it.

With regard to a *consul:* he seems to be, according to the present system, a mere mercantile agent, and not a public minister with the dignity, functions, or privileges of an ambassador. But *Wicquefort* and *Vattel* are at variance about his character. The former says that consuls do not enjoy the protection of the law of nations; and that, both in civil and criminal cases, they are subject to the tribunals of the State wherein they reside. Vattel, on the other hand, thinks the instances quoted contradict the proposition[1]. I agree with Wicquefort. The question of precedency among nations, as will readily be conceived from what has been said, becomes an important question; as it is with individuals. As we have seen, men were in the beginning equal and independent, as of right: and so of nations. This right still continues without reference to the form of government. But as man to man,

[1] Vattel, b. ii. ch. 11.

so nation waives to nation this strict right of equality from motives of good will, a desire of peace, or from a sense of inferiority. In some cases, indeed, this is settled by treaty; in others long and uniform usage has given it the force of law: when neither prevails, man's primary right of equality is the rule.

Of private persons abroad.—In the beginning, man was one and alone; woman was made of him and for him. They increased and multiplied; to family succeeded tribes, to tribes succeeded nations. By adoption, or some such act, the member of one family, one tribe, or one nation, was admitted as a member of another. The world (civilized and savage) is now under the influence of the same law of adoption. It is divided into nations; a member of one is an alien in the land of another, until some act of adoption incorporating him into it. Man did not, by this process of adoption or incorporation, forfeit or lose any of his original rights—rights acquired at his birth. A man,

his person, 2, his moveable, and 3, his immoveable property in England as well as in France. Firstly, of his person. He is a subject of England, and not of France; and as such he owes to the English crown all the allegiance he owed while residing at Brougham Hall, in Westmorland; with all its rights, duties, and consequences. Upon this I need say no more. In his passport (as in every other) there is an implied condition that he will obey the laws of the land which he is thus allowed to enter and live in; that is, all general laws made to maintain good order, and which are not confined to one born within the realm. He has neither the inviolability nor independency of a public functionary. He may be arrested. He may sue and be sued. He may be tried and punished as a criminal. He is liable to custom-house duties, &c. In short, he is exempt only from the burdens and services which have strict reference to the quality of a French subject, such as serving in the militia, the payment of such taxes as are intended

for the service of the State, and the like. On the other hand he is entitled to protection: whether this right arises from his obligation to these duties, or from an implied condition in his passport, seems not material to determine; for he is entitled to the fullest security the laws of France can afford him.

Nations observant of these rules carry out to great perfection the primary rights of man, and observe with admirable energy the language and spirit of the holy canons of our duty—the only source of the law of nations. Whether the recent quarrel between England and Greece, in reality, arose out of a denial of this right to a British subject, I decline to discuss.

Let us suppose the ex-Chancellor to have acquired new rights by adoption—to have been admitted a citizen of the French Republic. He is a subject of the imperial crown of Great Britain and Ireland; he is also a subject of the French Republic—allegiance on allegiance, not confounded nor diminished, but separate and entire.

The rights and duties of a Frenchman are superadded to those of an Englishman. But does this twofold allegiance never produce conflicting rights and duties between the two nations? It does, as presently will appear.

As to his property: it is moveable or immoveable; it is in England or in France. As a general rule, he and his property are supposed to be at home, both forming a part of the aggregate strength and wealth of his own nation. I say as a general rule, for, as regards his immoveable property, there is an exception or qualification. As he is supposed to be in England, he exercises his rights over his property as the English law directs or admits of, just as if he were at Brougham Hall. But he is obliged to observe the French law with respect to the moveable property he possesses there. It is to be observed further, that in many countries an alien can acquire no real or immoveable property, and moveable property *sub modo* only. In England an alien friend can take, but cannot hold, real

property; and escheatage, which Vattel condemns so much, prevails to the utmost extent. Marriages were in the beginning as free as mankind. It knew of no impediment, of family, tribe, nation, or religion. But from the same law of self-defence, or under the pretence of it, marriages between persons of different religions are prohibited; so likewise age is mostly imposed as a condition.

Now, although every nation has the inherent right to make what laws or regulations affecting foreigners it pleases, yet they must be based on this,—

"Love thy neighbour as thyself";

or they must lie under the suspicion of being no policy at all. They must be laws or regulations having the good of mankind for their object; and be no more restrictive of man's primary freedom and primary rights than what consists with the nation's safety.

CHAPTER III.

COMMERCE.

WHAT has been said upon national intercourse, dominion, and the like, clears the way a good deal for the all-absorbing question of trade. Its principles are plain and easy. These are its first elements:—

"Love the Lord thy God with all thy heart, and with all thy soul, and with all thy strength."

"Love thy neighbour as thyself."

Louis is by the latter canon to love *Ferdinand* as he loves himself. To the utmost measure of his ability, consistently with a due regard for himself, Louis must promote Ferdinand's welfare. Now Ferdinand asks Louis to part with something which Louis possesses. He has the right so to ask, perhaps, as one of the reversioners of all property—as a member of the *ultimus hæres*—Man. It is Louis's duty, by the holy canon, to grant the request;

that is, to comply with the request as well as he can, consistently with a due regard for his own welfare. Hence the rights and duties of trading, as between man and man, and as between nation and nation. Now, individuals or nations are the sole judges of the fact, whether they can with safety part with their possessions—part with them at all, or part with them *sub modo*. A nation may, therefore, refuse to trade with others, as the Chinese have done; or may grant a monopoly to one of several; or may impose such restrictions as seem to be necessary for self-preservation. Of that necessity or expediency, as I have said before, it is the sole judge. Suppose, however, a nation should wholly refuse to trade with another, or should impose restrictions in effect amounting to a prohibition: and do so, not out of a regard for others' welfare nor yet its own, but from enmity, revenge, revolutionary zeal, and the like, what then? The answer is easy:—leave that nation to its folly and the retributive justice which, sooner or later, comes

in punishment of any violation or wanton derogation of the rights of man. The primary right to ask for possessions, and the primary duty to part with them, can only be controlled by this duty of self-preservation. Restrictions so caused and so measured are right; restrictions proceeding from any other source, or differently measured, are essentially wrong; and what is morally wrong cannot be politically right. These are the principles of commerce. Whether any or what restrictions are necessary for *a* nation is not an *international* but a *national*, or local question, to be determined at home *inter se*; therefore I do not enter into it here, although, from what has been said, it will not be difficult to see what should be our guide to the truth in all such questions.

Out of this right of the possessor to part with a thing on what terms he pleases, spring commercial *treaties*, that is to say, written contracts between two or more nations, containing the terms of their dealings and intercourse. These canons

should be the basis of every treaty. The love of God and Man should be its spirit. When made, it should be regarded as a contract *uberrimæ fidei*—made to be kept, not broken; not to be more honoured in the breach than in the observance, as I fear such things but too often are. The commentators on the law of nations amuse us with a variety of rules of construction. In my thinking, there is no rule so sound as that of the English law, namely, to take a man to mean what he says.

But what if this treaty be broken? an indictment will not lie against a whole nation; there is no tribunal on earth before which the offenders could be arraigned. Yes, there is a tribunal which can and will try them! When, then, such an act of treason against the majesty of nations is committed, appeal not to arms, but to the justice of that Being who alone has the right and the power to sit in judgment upon the offender.

In conclusion: I have endeavoured to lead you to the fountain whence, by the

Divine will, the law of nations issues. I have cautioned you against the vague and dangerous conjectures of others. I have shown you how easy it is for men or nations, if they only will, to reach that source of moral duty: and to apply the waters of life, with never-failing influence, to all the ills the present State-system is affected with. I may, perhaps, seem at times to have written too much in the language and spirit of the British law. I can only say that whenever they were in harmony with the two Christian canons and with my own sentiments, as a citizen of the world, I freely and fearlessly adopted its style and matter. The common law of England has been pronounced, and in my judgment is, the perfection of human reason: its language, therefore, is the language of the universe, its spirit, the spirit of truth.

I wish once more to pour into the ears of men this great political maxim:

"Truth to Christ cannot be treason to Cæsar."

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